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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 75

MANDEVILLE ISLAND FARMS, INC., AND ROSCOE C. ZUCKERMAN, PETITIONERS,

vs.

AMERICAN CRYSTAL SUGAR COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 28, 1947.

CERTIORARI GRANTED JUNE 2, 1947.

No. 11266

United States
Circuit Court of Appeals
For the Ninth Circuit.

MANDEVILLE ISLAND FARMS, INC., a corporation, and ROSCOE C. ZUCKERMAN,

Appellants,

vs.

AMERICAN CRYSTAL SUGAR COMPANY, a corporation,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Rotary Colorprint, 661 Howard Street, San Francisco

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States for the Southern District of California, Central Division

No. 4643-BH

MANDEVILLE ISLAND FARMS, INC., a Corporation, and ROSCOE C. ZUCKERMAN,

Plaintiffs,

vs.

AMERICAN CRYSTAL SUGAR COMPANY, a Corporation,

Defendant.

ACTION FOR AN ACCOUNTING, DAMAGES UNDER THE ANTI-TRUST LAWS, ETC.

Now comes plaintiffs above named and as a first count herein allege:

I.

The grounds upon which the jurisdiction of the court depends are: (a) Diversity of citizenship; (b) this is an action brought by persons injured in their business and property by reason of acts of the defendant forbidden in the anti-trust laws of the United States, (15 U.S.C. §15) and brought in a district in which the defendant is found and has an agent.

II.

(a) Plaintiff Mandeville Island Farms, Inc., now is and at all times herein mentioned has become a corporation duly organized and existing under and by virtue of the laws of and a citizen and inhabitant of the State of California, with its

principal place of [2] business in Stockton, San Joaquin County, California.

(b) Defendant American Crystal Sugar Company now is and at all times herein mentioned has been a corporation organized and existing under and by virtue of the laws of and a citizen and inhabitant of the State of New Jersey, with its principal office and place of business in Denver, Colorado, and engaged in trade and commerce among the several states of the United States. At all times herein mentioned, said defendant has been and now is qualified to do and doing business in California and in the above entitled district thereof as a foreign corporation and is found in the above entitled district and division of California and in various other parts of California. Its agent designated for service of process under and by virtue of the law of the State of California regarding foreign corporations, is, J. W. Rooney of Oxnard, Ventura County, in the above entitled district and division of California.

(c) Plaintiff Roscoe C. Zuckerman now is and at all times herein mentioned has been a citizen and inhabitant of the State of California and a resident of San Joaquin County in said State.

III.

Plaintiffs Mandeville Island Farms, Inc., and Roscoe C. Zuckerman assert rights herein to relief in respect of or arising out of a series of transactions in which common questions of law and common questions of fact arise and are involved.

The said transactions involve agricultural contracts identical in practically all material matters and respects, for successive cropping seasons, each involving sugar beets to be grown and grown on Mandeville Island which is a tract of land located in California north of the 36th parallel. A sugar crop season or year as referred to herein is from August 1st of any particular year to July 31 of the next calendar year and is commonly referred to herein by the year number of the calendar year in which it commences. [3]

IV.

The matter in controversy herein exceeds, exclusive of interest, costs, and attorney fees, the sum of $3,000.00.

V.

(a) During the crop seasons 1938 to 1942, both inclusive, large acreages of agricultural land in California north of the 36th parallel were planted to sugar beets. Said sugar beets, when harvested, were not sold in central markets as were potatoes, onions, corn, grain, fruit and berries, but were produced by growers under contract with manufacturers or processors and immediately upon being harvested were delivered to these manufacturers and taken to their beet sugar refineries where the sugar beets were manufactured by an elaborate process into raw sugar by the said manufacturers, who thereafter sold the resulting sugar in interstate commerce. Said sugar beets, when harvested, were bulky and semi-perishable and incapable of being transported over long distances or of being

stored cheaply or safely for any extended period. Said sugar beets, when ripe, deteriorated rapidly if kept in the ground and not harvested, and it was necessary to harvest them promptly when matured.

(b) The only practical market available to growers of sugar beets in California north of the 36th parallel during said period was sale to one of the three manufacturers that operated one or more beet sugar refineries in said district. Defendant was one of said three manufacturers. The initial outlay for the construction of a beet sugar refinery was so great, the annual upkeep and operating expenses were so large, and the time involved in erecting and equipping a beet sugar refinery so long that no competition from any new refinery could be expected within a period of time shorter than two years, even if the necessary material and equipment priorities could be secured. During all of said period, said three manufacturers of sugar beets had a complete monopoly in the manufacture of sugar beets into sugar in California north of the 36th parallel and owned and [4] controlled all sugar beet factories in said area of California which manufactured sugar beets into sugar, and no grower of sugar beets in California north of the 36th parallel could, during any part of said period, sell sugar beets at a profit except to one of said manufacturers. The sugar manufactured from said beets was, during all of said period, sold in interstate commerce throughout the United States.

VI.

During said period above referred to, the only method of sale of marketable sugar beets used by growers of sugar beets in said area was by sale to one of the said three manufacturers under standard form printed contracts prepared by the manufacturers whereby the price to be paid by the manufacturer to the grower of sugar beets was determined for beets of a given sugar content by the net price received from the sale in interstate commerce of the raw sugar manufactured from the sugar beets delivered by the various growers to the manufacturers.

VII.

In and by said standard contract, the grower agreed (a) to plant a specified acreage to sugar beets with seed furnished by the manufacturers to the grower at grower's cost, (b) to cultiv te said land after the same had been planted and to care for and harvest the sugar beets, and (c) to deliver the beets so harvested to the manufacturer. The manufacturer agreed in and by said contract (a) to accept delivery of said sugar beets from the grower except that the manufacturer had the right to reject any beets that were diseased, wilted or not suitable for the manufacture of sugar, (b) to manufacture into sugar the sugar beets accepted by it, (c) to sell the raw sugar so produced not later than August 31 of the next crop year, (d) to make on the 15th day of each month an advance payment for the sugar beets delivered during the preceding month, based on the estimate made by

the manufacturer of the sugar sold [5] and to be sold which had been manufactured from beets produced by the grower and other growers under like contracts, and (e) to make final settlement for all beets after the sugar manufactured from said beets had been sold in interstate commerce, but on or before August 31st of the next crop year, the price to be paid for said beets to be determined upon the sugar content of the beets of the individual grower and the net return received from the sale of the manufactured raw sugar in interstate commerce.

VIII.

Defendant and the other manufacturers of sugar referred to herein were at all times herein mentioned growers of sugar beets and "producers on the farm" of sugar beets and "processors of sugar beets" as those respective phrases are and were used in the Sugar Act of 1937. Plaintiff is informed and believes and upon such information alleges that each of said persons received payments for the crop years 1939, 1940, and 1941 from the Secretary of Agriculture in accordance with §301 of the said Sugar Act. (7 U.S.C. 1131). Claude R. Wickard was at all times mentioned in this paragraph the duly appointed, qualified and acting Secretary of Agriculture. On Dec. 2, 1940, said Secretary of Agriculture, after due notice to all interested parties (including defendant and all other manufacturers of sugar in California) and after public hearings duly held and after investigations duly made, did pursuant to §301d of said Sugar Act (7 U.S.C. 1131 (d)) made the following

determination of the fair and reasonable price for the 1940 and 1941 crops of sugar: (5 Fed. Reg. 5231):

"Fair and reasonable prices for the 1940 and 1941 crops of sugar beets. The requirements of subsection (d) of section 301 of the Sugar Act of 1937, as amended, shall be deemed to have been fulfilled with respect to the 1940 and 1941 California crops of sugar beets if the producer-processor shall have paid rates for any sugar beets processed by him equal to those provided in the following schedule: [6]

Percentum sucrose in beets	Average net return per 100 lbs. of sugar				
	$4.00	$3.75	$3.50	$3.25	$3.00
	Price per ton of sugar beets				
19	$7.12	$6.65	$6.18	$5.70	$5.22
18	6.66	6.21	5.76	5.31	4.86
17	6.20	5.78	5.36	4.93	4.50
16	5.76	5.36	4.96	4.56	4.16
15	5.32	4.95	4.58	4.20	3.82
14	4.90	4.55	4.20	3.85	3.50

(Payments upon intermediate sugar prices and sugar content, or sugar prices or sugar content, higher or lower than those shown in the foregoing schedule, shall be on the same proportionate basis.)

Provided, however, that in no event shall the average net return used as the settlement basis be determined by averaging the net proceeds realized from the sale of sugar by more than one producer-processor: And provided further, that a haulage allowance at a rate not less than 2½ cents per mile per ton shall be granted to growers who perform

such service in areas in which allowances have been agreed upon between producer-processors and growers."

No appeal has been taken from said determination and any time to appeal has expired; it has not been modified, abrogated, cancelled, or withdrawn, but has become final. The fair and reasonable prices for sugar beets for the 1940 and 1941 California crops are as set forth in said determination.

IX.

Prior to the crop season of 1939 and subsequent to the crop season of 1941, the net return from the sale of manufactured raw sugar was determined by the net return from the sale of raw sugar manufactured in beet sugar factories of the particular contracting manufacturer from beets delivered to said manufacturer by the grower and other growers in the same area during the particular crop season, in accordance with the schedule set forth in the standard contract. [7] But during the crop seasons of 1939, 1940 and 1941, pursuant to the conspiracy hereinafter referred to, the standard printed contract as used by all of said manufacturers provided that the net return used as a basis for the prices to be paid the grower was the average net return of all manufacturers manufacturing sugar north of the 36th parallel in California and not the net return of the particular manufacturer with whom the grower contracted and to whom the beets were delivered and by whom the beets were manufactured into raw sugar.

X.

During the sugar beet crop year of 1938, the net gross receipts of sales of sugar, (less allowances, federal excise taxes, freight to destination, and cash discounts to customers) secured by defendant were 3.641 cents per pound while, at the same time, the like average net gross receipts from the other manufacturers of beet sugar in California north of the 36th parallel were 3.348 cents per pound, or .263 cents less than the net gross receipts secured by defendant. As a result thereof, during the crop year 1938, sugar beet growers in California north of the 36th parallel received on the average from 29½ cents to 52½ cents per ton more for sugar beets delivered to defendant corporation than did growers of identical beets of identical sugar content delivered to other manufacturers of beet sugar in California north of the 36th parallel.

XI.

Thereupon and some time in 1937 or 1938, at a time unknown to plaintiffs but particularly within the knowledge of defendant, said defendant illegally and wrongfully entered into a conspiracy with each and every one of the other manufacturers of sugar in California whose plants were located north of the 36th parallel to unlawfully monopolize and restrain trade and commerce in sugar and sugar beets among the several states and to unlawfully fix prices to be paid the growers of sugar beets, all in violation of the anti-trust [8] laws of the United States, and as a part of said unlawful conspiracy agreed

among themselves to do and did as follows during the crop years 1939, 1940, and 1941.

(a) Each no longer competed against any of the others as to the price to be paid the growers for sugar beets raised in California north of the 36th parallel.

(b) Each paid the same price to growers of sugar beets in California north of the 36th parallel and no more, to wit: the price determined upon the average net returns from the sale of raw sugar of all sugar manufactured in the plants of said conspirators north of the 36th parallel in California and did not pay the growers upon the net returns from the sale of sugar manufactured in California north of the 36th parallel by the particular manufacturer to whom the particular grower was under contract.

(c) Each no longer competed with any of the other manufacturers of sugar north of the 36th parallel as to efficiency of sales or manufacturing organizations, but instead, and regardless of the efficiency or lack of efficiency of the sales or manufacturing organization of any of the conspirators, and regardless of the price at which sugar was sold from any particular refinery or from any particular manufacturer's refinery or refineries, paid all growers of sugar beets in California north of the 36th parallel, the same price for the same amount of beets of the same sugar content.

(d) Instead of paying the grower of sugar beets a reasonable price for their beets, each bought

beets only from growers who signed a standard printed form contract prepared by the said manufacturers and identical in all material terms. Growers either sold under said contract to one of said manufacturers or could not sell their marketable [9] beets to anyone except for hog or cattle feed at a large loss.

(e) Said standard contract for the crop years 1939, 1940, and 1941 provided that the price to be paid the grower of sugar beets in dollars and cents for beets containing 15%, 16%, 18% and 19% sugar (the percentages here involved) was as follows:

Net return received from sugar per cwt.	Amount to be paid to grower per ton of beets			
	19%	18%	16%	15%
5 cents	8.74	8.28	7.28	6.72
4¾ "	8.33	7.89	6.94	6.41
4½ "	7.92	7.51	6.60	6.09
4¼ "	7.35	6.97	6.12	5.65
4 "	6.78	6.42	5.64	5.21
3¾ "	6.21	5.88	5.17	4.77
3½ "	5.72	5.42	4.76	4.40
3¼ "	5.31	5.03	4.42	4.08
3 "			3.77*	3.49*

* For the year 1940 only.

Said standard contract gave a schedule of net returns from sugar per 100 lbs. in one-fourth cent intervals and show the percentage of sugar content in one per cent intervals, including those above set forth, but the contract further provided that intermediate figures of net return from sugar 100 lbs. and intermediate percentages of sugar content were

to be figured pro rata. Inasmuch as beets of sugar content other than 15%, 16%, 18% and 19% are not herein involved, the schedules herein are limited to such percentages. Said prices agreed upon by defendant and its co-conspirators to be paid by them and paid by them to plaintiff and the [10] other growers of sugar beets in California north of the 36th parallel were not the reasonable prices for sugar beets. The reasonable prices for sugar beets for the crop years 1940 and 1941 were as determined by the secretary of Agriculture and set forth in par. VIII hereof.

XII.

Prior to the 1939 crop season, the various manufacturers of sugar in California north of the 36th parallel, including defendant, competed with each other as to the performance, ability and efficiency of their manufacturing, sales and executive departments, and each strove to increase sales return and decrease expenses and to operate as efficiently as possible and thus to increase the unit return to growers of sugar beets under said standard contract. But during said crop seasons of 1939, 1940 and 1941, as a direct, expected and planned result of said conspiracy, there was no longer any such competition. Plaintiffs are informed and believe and, upon such information and belief, allege that defendant, as a result of said conspiracy, did not during said crop seasons of 1939, 1940 and 1941, conduct its operations in as efficient and careful manner as it had prior thereto (when there was no conspiracy but was competition between itself and

the other manufacturers), or in as efficient or careful manner as it would have had said conspiracy not existed. As a result thereof, defendant received less in sales returns for its raw sugar and incurred more expense in its operations in said crop years than it would have had competition been free from and unrestrained by said conspiracy and plaintiffs did not receive the reasonable value of their sugar beets.

XIII.

As a direct, expected and planned result of said conspiracy, the free and natural flow of commerce in interstate trade was intentionally hindered and obstructed, and, instead of defendant and [11] the other said manufacturers producing and selling raw sugar in interstate commerce with individual enterprise and sagacity, and in competition with each other as they had previously done, they became illegally associated in a common plan wherein they pooled their receipts and expenses and frustrated the free enterprise system which it was and is the purpose of the anti-trust acts to protect and which had existed prior to said conspiracy. As a further direct, expected and planned result of said conspiracy, any and all incentive that theretofore existed for defendant and the other said manufacturers to be efficient and economical and to develop individual enterprise and sagacity, disappeared, and, during said crop seasons, said three manufacturers operated, in so far as the growers were concerned, as if they were one corporation owning and controlling all sugar beet factories in California

h of the 36th parallel but with three completely rate overheads and with none of the efficiency consolidation into one corporation might bring.

XIV.

aid conspiracy continued throughout the crop rs of 1939, 1940 and 1941, and until August 31, 2, when the last payment was made under the l standard contract and said conspiracy has n continued thereafter up to the present time so far as defendant and each of its co-conspira- s still refuse and will not make payments to any the growers other than in accordance with the thod agreed upon in said conspiracy as above set th.

XV.

The determination of the Secretary of Agricul- e under the Sugar Act of 1937 as to the fair and asonable prices for the 1940 and 1941 California ops of sugar beets was made Dec. 21, 1940, and s published on the Federal Register on Dec. 24, 40, as aforesaid, but, nevertheless, defendant and said co-conspirators, each of whom took part in e said hearings held by the Secretary of Agricul- re, [12] and each of whom well knew of the de- rmination, persisted thereafter in their said con- iracy and would not buy beets from growers in alifornia north of the 36th parallel except under e terms and conditions set forth in said standard greement.

XVI.

On November 14, 1938, defendant and plaintiff

Mandeville Island Farms, Inc., entered into one of defendant's standard form contracts for the 1939 crop season under which defendant promised to pay said plaintiff on August 31, 1940, for the sugar beets delivered thereunder. Said plaintiff performed each and every term, condition and covenant on its part to be performed in said contract and during the crop year 1939 delivered to defendant 22,355.6 tons of sugar beets of an average sugar content of 18.25% from Mandeville Island, which beets were accepted by defendant and manufactured by it in sugar. Said plaintiff does not know when said sugar beets were manufactured into sugar by defendant. Said information is particularly within the knowledge of defendant. Said plaintiff has requested said information but defendant has refused to furnish and has not furnished the same to plaintiff.

XVII.

On December 29, 1939, defendant and plaintiff Mandeville Island Farms, Inc., entered into one of defendant's standard form contracts for the 1940 crop season under which defendant promised to pay said plaintiff on August 31, 1941, for the sugar beets delivered thereunder. Said plaintiff performed each and every term, condition and covenant on its part to be performed in said contract and during the crop year 1940 delivered to defendant 25,430.3 tons of sugar beets of an average sugar content of 15.55% from said Mandeville Island, which beets were accepted by defendant and manufactured into sugar. Said plaintiff does not know

en said beets were manufactured into sugar by fendant. Said information is particularly within knowledge of defendant. [13] Said plaintiff has quested said information but defendant has re-sed to furnish and has not furnished the same to aintiff.

XVIII.

On June 23, 1941, defendant and plaintiff Roscoe Zuckerman entered into one of defendant's andard form contracts for the 1941 crop season nder which defendant promised to pay said plain-ff on August 31, 1942, for the sugar beets delivered ereunder. Said plaintiff performed each and very term, condition and covenant on its part to be erformed in said contract and during the crop ear 1941 delivered to defendant 14,144.7 tons of ugar beets of an average sugar content of 15.47% rom said Mandeville Island, which beets were ac-epted by defendant and manufactured by it into ugar. Said plaintiff does not know when said ugar beets were manufactured into sugar by de-fendant. Said information is particularly within the knowledge of defendant. Said plaintiff has requested said information but defendant has re-fused to furnish and has not furnished the same to plaintiff.

XIX.

Defendant paid plaintiffs for their 1939, 1940 and 1941 crops of sugar beets on August 31 of 1940, 1941 and 1942, respectively, but in carrying out said conspiracy and as a part and parcel thereof, said defendant paid plaintiffs on said respective

dates, not upon the price secured in interstate commerce from sugar beets delivered by plaintiffs and other growers located north of the 36th parallel to the refineries of defendant located north of the 36th parallel, as defendant had paid growers prior to the 1939 crop year and not upon the prices and the bases determined by the Secretary of Agriculture to be fair and reasonable as aforesaid; but paid them in accordance with the average net return secured in interstate commerce by all manufacturers of beet sugar with refineries in California north of the 36th parallel and in accordance with the schedule set forth in the said standard contracts. Plaintiffs are informed and believe [14] and, upon such information and belief allege that the net sales return secured from sugar sold by defendant was greater than the average secured by all manufacturers of sugar north of the 36th parallel. Had it not been for said unlawful plan and conspiracy and if said sugar had been manufactured and sold in interstate commerce in competition with the sugar of the co-conspirators, unhampered by said plan and conspiracy, plaintiff Mandeville Island Farms, Inc., would have received at least $105,014.60 more and plaintiff Roscoe C. Zuckerman would have received at least $37,397.38 more than each did receive under said contracts and said plaintiffs, respectively, sustained damages accordingly, none of which damage has been paid. The exact amount that plaintiffs were damaged, as aforesaid, can only be determined by an accounting in that defendant has refused all requests and demands of plaintiffs

for information on which plaintiffs could determine and could herein plead the specific amounts due to plaintiffs. Plaintiffs are entitled by virtue of paragraph 15 of the anti-trust laws of the United States (15 U.S.C. Sec. 15) to have such damages trebled.

XX.

By reason of the foregoing acts of the defendant and its said co-conspirators, interstate commerce in sugar was illegally restrained, competition therein was not only substantially lessened but was destroyed, the price of sugar beets was illegally fixed, and an illegal monopoly was established, all in violation of the anti-trust laws of the United States to the damage of plaintiffs as aforesaid.

XXI.

Plaintiffs, in order to enforce their rights against defendant, employed the services of attorneys at law and, under the anti-trust laws of the United States (15 U.S.C. Sec. 15), are entitled to reasonable attorneys' fees, the amount of which will depend upon the amount of work necessary to be performed herein by said attorneys. [15]

XXII.

From October 10, 1942, to June 30, 1945, the statute of limitations applicable to the within set forth violations of the anti-trust laws of the United States was suspended by reason of the amendment of 16 U.S.C. Sec. 16, passed October 10, 1942 (Acts of Congress October 10, 1942, Ch. 589; 56 Stat. 781, U.S.C. 1940 ed., Sup. IV, p. 185; 15 U.S.C.A. 1944 Cum. An. P. P. Title 15, Sec. 16, p. 76), which was

in full force and effect between October 10, 1942 and June 30, 1945.

And As a Second Count, plaintiff Mandeville Island Farms, Inc., alleges:

XXIII.

The ground upon which the jurisdiction of the court depends is diversity of citizenship.

XXIV.

Plaintiff refers to Pars. II, III, IV, V, VI, VII, VIII, IX, X, & subpar. e of Par. XI hereof and incorporates the same herein by reference as though here set forth in full.

XXV.

Plaintiff refers to Par. XVII hereof and incorporates the same herein by reference as though here set forth in full.

XXVI.

Commencing the latter part of December, 1940, and continuing until March, 1941, the price of raw sugar increased in value by the amount of approximately 75c per 100 lbs. and remained at said higher prices or even still higher prices for many months thereafter. Said plaintiff Mandeville Island Farms, Inc. is informed and believes and, upon such information and belief, alleges that defendant, instead of selling said sugar at the higher prices that prevailed subsequent to April 1, 1941, retained most of it and sold it subsequent to August 31, 1941, at the high prices then prevailing. Defendant did not

account to nor pay said plaintiff the price provided [16] for in the contract for said sugar but, instead, defendant determined the price to be paid said plaintiff for said sugar, not upon the prices actually received for the sugar manufactured from sugar beets produced by plaintiff and other growers during the crop season of 1940 and delivered during said crop season under said standard form of contract but used the prices obtained for sugar sold from August 1, 1940 to August 31, 1941, regardless of when the sugar then sold was produced or manufactured. Said sales consisted mainly of sugar on hand and in storage August 1, 1940 and which was grown and delivered in previous crop seasons and which was sold by said defendant and the other manufacturers at the lower prices that prevailed from August 1, 1940 to December 31, 1940, instead of at the higher prices that prevailed when the 1940 sugar was actually sold. Said plaintiff is informed and believes and, upon such information and belief, alleges that defendant, and the other manufacturers, well knowing that the price of sugar would rise prior to January 1, 1941, made various sales prior thereto after it and they had such knowledge to various purchasers so that the purchasers would reap the profits resulting from the increased price which defendant and said other corporations knew was about to occur, at the expense, detriment and loss of said plaintiff and other growers under like contracts.

XXVII.

Defendant has paid to said plaintiff the sum of

$102,767.13 for 25,430.3 tons of sugar beets of 15.55% average sugar content, delivered by said plaintiff to defendant and accepted by defendant from plaintiff under said standard contract for the 1940 season. Said payment, however, was, as aforesaid, based not upon the sales of the sugar manufactured from sugar beets grown and delivered during the 1940 crop season, but upon the sales made during the 1940 season, regardless of when the beets were grown and delivered and regardless of when the sugar was manufactured. Plaintiff is informed and believes and, upon such information and belief, alleges that said [17] sales were composed mainly of sugar manufactured previous to the 1940 season from beets not produced or delivered during the 1940 season.

XXVIII.

Heretofore said plaintiff made written demand upon defendant that it furnish plaintiff an accounting showing the average net returns from the sugar manufactured from sugar beets produced and delivered during the 1940 season, but defendant has refused to and will not furnish and has not furnished any such accounting and plaintiff has no way or means other than by an accounting suit to secure such information. Said plaintiff is informed and believes and, upon such information and belief, alleges that if plaintiff were paid upon the average net returns of sales of sugar manufactured from the beets delivered during the 1940 season, plaintiff would be entitled to receive under

said contract at least $30,000 more than plaintiff did receive.

XXIX.

In addition to accounting to and paying said plaintiff on the wrong basis as hereinabove set forth, defendant did not sell the sugar produced from the 1940 crop at the best price obtainable but sacrificed the same as aforesaid. Said plaintiff is informed and believes and, upon such information and belief, alleges that had defendant sold said sugar at the best price obtainable instead of sacrificing the same as aforesaid, plaintiff would have been entitled under said contract to receive at least $10,000.00 more than plaintiff did receive. The exact amount of this damage can only be ascertained by an accounting as the figures therein involved are particularly within the knowledge of and shown by the records of defendant.

XXX.

In addition to the accounting to and paying plaintiff upon the wrong basis as hereinabove set forth, defendant, in arriving at the net return for sugar sold during the crop season of 1940, charged as expenses various improper amounts which should not have been [18] charged and which defendant was not entitled to charge, including the following:

(a) Insurance on stored raw sugar from previous years' crops.

(b) Personal property taxes on stored sugar from previous years' crops.

(c) Cost of reconditioning stored sugar from previous years' crops that needed reconditioning because of the long length of time it has been stored instead of being sold.

Said plaintiff does not know the amount of such items as the same were lumped with other items in the accounting furnished by defendant to plaintiff. Said matters are particularly within defendant's knowledge. An accounting thereof has been requested by plaintiff of defendant but the same has been refused and has not been furnished. Plaintiff is informed and believes and, upon such information and belief, alleges that had these improper items not been included, plaintiff would have been entitled to receive and there would have been due to plaintiff the additional sum of at least $5,000.00.

XXXI.

a. In addition to accounting to and paying said plaintiff on the wrong basis as hereinabove set forth, the defendant calculated the amount to be paid to plaintiff upon an incorrect basis and not the basis provided for in the contract. The sum of $102,767.13 paid to plaintiff as aforesaid, was based upon 25,430.3 tons of beets of an average sugar content of 15.55% and upon an alleged net return per 100 lbs. of sugar of $3.160. In arriving at said sum of $102,767.13, defendant erroneously and contrary to said agreement took an intermediate sugar price of $4.04. The intermediate sugar price arrived at by correct arithmetical calculations under the contract (assuming that $3.160 was correct) would be

$4.04272 instead of $4.04. As a result, defendant underpaid said plaintiff $.00272 per ton, or a total of $69.27, assuming that the net return per 100 lbs. of sugar was $3.160. [19]

b. Furthermore defendant calculated the amount to be paid said plaintiff Mandeville Island Farms, Inc. for the 1940 crop upon the said schedule set forth in the standard contract and not upon the said schedules set forth in the said determination of the Secretary of Agriculture. Beets of a sugar content of 15.55%, made into sugar which returned an average of $3.160 per 100 lbs. to the manufacturer would pay the grower $4.255 a ton, under the said determination schedules instead of $4.04 a ton under the standard contract, schedule, a difference of 21 cents a ton or $5,467.52 on 25,430.3 tons, which sum is due and unpaid to said plaintiff in addition to the other sums herein referred to.

And As a Third Count, plaintiff Roscoe C. Zuckerman alleges:

XXXII.

The ground upon which the jurisdiction of the court depends is diversity of citizenship.

XXXIII.

Said plaintiff refers to Pars. II, III, IV, V, VI, VII, VIII, IX, X and subpar. e of Par. XI hereof and incorporates the same herein by reference as though here set forth in full.

XXXIV.

Said plaintiff refers to Par. XVIII hereof and

incorporates the same herein by reference as though here set forth in full.

XXXV.

On January 1, 1942, the price of raw sugar increased substantially in price, and during the month of April, 1942, the price of sugar again increased substantially in price and remained at said higher price for many months thereafter. Said plaintiff is informed and believes and, upon such information and belief, alleges that defendant, instead of selling said sugar on or before August 31, 1942, at the high prices that prevailed from April until August, 1942, sold but little of it and retained most of it and sold it subsequent to [20] August 31, 1942, at the high prices then prevailing. Defendant did not account to nor pay said plaintiff the price provided for in the contract for said sugar but, instead, defendant determined the price to be paid said plaintiff for said sugar, not upon the prices actually received for the sugar manufactured from sugar beets produced by plaintiff and other growers during the crop season of 1941 and delivered during said crop season under said contract, but used the prices obtained for sugar sold from August 1, 1941 to August 31, 1942, regardless of when the sugar then sold was produced or manufactured. Said sales consisted mainly of sugar on hand and in storage August 1, 1941 and which was grown and delivered in previous crop seasons and which was sold at the lower prices that prevailed from August 1, 1941 to December 31, 1941, instead of at

the higher prices that prevailed when the 1941 sugar was actually sold. Said plaintiff is informed and believes and, upon such information and belief, alleges that defendant and the other sugar manufacturers, well knowing that the price of sugar would rise on January 1, 1942, made various sales prior thereto after it had such knowledge to various purchasers so that the purchasers would reap the profits resulting from the increased price which defendant knew was about to occur, at the expense, detriment and loss of said plaintiff and other growers under like contracts.

XXXVI.

Defendant has paid to said plaintiff the sum of $74,794.76 for 14,144.7 tons of sugar beets of 15.47% average sugar content, delivered by said plaintiff to defendant and accepted by defendant from plaintiff under said standard contract for the 1941 season. Said payment, however, was, as aforesaid, based not upon the sales of the sugar manufactured from sugar beets grown and delivered during the 1941 crop season, but upon the sales made during the 1941 season, regardless of when the beets were grown and delivered and regardless of when the sugar was manufactured. Plaintiff is informed and [21] believes and, upon such information and belief, alleges that said sales were composed mainly of sugar manufactured previous to the 1941 season from beets not produced or delivered during the 1941 season.

XXXVII.

Heretofore said plaintiff made written demand upon defendant that it furnish plaintiff an accounting showing the average net returns from the sugar manufactured from sugar beets produced and delivered during the 1941 season, but defendant has refused to and will not furnish and has not furnished any such accounting and plaintiff has no way or means other than by an accounting suit to secure such information. Said plaintiff is informed and believes and, upon such information and belief, alleges that if plaintiff were paid upon the average net returns of sales of sugar manufactured from beets delivered during the 1941 season, plaintiff would be entitled to receive under said contract at least $30,000 more than plaintiff did receive.

XXXVIII.

In addition to accounting to and paying said plaintiff on the wrong basis as hereinabove set forth, defendant did not sell the sugar produced from the 1941 crop at the best price obtainable but sacrificed the same as aforesaid. Said plaintiff is informed and believes and, upon such information and belief, alleges that had defendant sold said sugar at the best price obtainable instead of sacrificing the same as aforesaid, plaintiff would have been entitled under said contract to receive at least $10,000.00 more than plaintiff did receive. The exact amount of this damage can only be ascertained by an accounting as the figures therein involved are particularly within the knowledge of and shown by the records of defendant.

XXXIX.

In addition to the accounting to and paying plaintiff upon the wrong basis as hereinabove set forth, defendant, in arriving at the net return for sugar sold during the crop season of 1941, charged as expenses various improper amounts which should not have been charged and which defendant was not entitled to charge, including the following:

(a) Insurance on stored raw sugar from previous years' crops.

(b) Personal property taxes on stored sugar from previous years' crops.

(c) Cost of reconditioning stored sugar from previous years' crops that needed reconditioning because of the long length of time it has been stored instead of being sold.

Said plaintiff does not know the amount of such items as the same were lumped with other items in the accounting furnished by defendant to plaintiff. Said matters are particularly within defendant's knowledge. An accounting thereof has been requested by plaintiff of defendant but the same has been refused and has not been furnished. Plaintiff is informed and believes and, upon such information and belief, alleges that had these improper items not been included, plaintiff would have been entitled to receive and there would have been due to plaintiff the additional sum of at least $5,000.00.

XL.

a. In addition to accounting to and paying said

plaintiff on the wrong basis as hereinabove set forth, the defendant calculated the amount to be paid to plaintiff upon an incorrect basis and not the basis provided for in the contract. The sum of $74,794.76 paid to plaintiff as aforesaid, was based upon 14,144.7 tons of beets of an average sugar content of 15.47% and upon an alleged net return per 100 lbs. of sugar of $3.950. In arriving at said sum of $74,794.76, defendant erroneously and contrary to said agreement took an intermediate sugar price of $5.29. The intermediate sugar price arrived at by correct arithmetical calculations under the contract (assuming that $3.950 was correct) would be $5.32128 instead of $5.29. As a result, defendant underpaid said plaintiff $.03128 per ton, or a total of $442.45, assuming that the net return per 100 lbs. of sugar was $3.950. [23]

b. Furthermore, defendant calculated the amount to be paid said plaintiff Roscoe Zuckerman for the 1941 crop upon the said schedules set forth in the standard contract and not upon the said schedules set forth in the said determination of the Secretary of Agriculture. Beets of sugar content of 15.47% made into sugar which returned on an average $3.950 per 100 lbs. to the manufacturer would pay the grower $5.46048 a ton under the said determination schedule instead of $5.29 as paid by defendant to plaintiff, a difference of $.17048 a ton or $2411.39 on 14,144.7 tons, which sum is due and unpaid to said plaintiff in addition to the other sums referred to herein.

Wherefore, plaintiffs pray judgment against defendant as follows:

1. That defendant be required to account to plaintiffs in connection with all sugar beets delivered by plaintiffs to defendant during the crop years 1939, 1940, and 1941, and for all sugar manufactured therefrom and sold by said defendant.

2. That plaintiff Mandeville Island Farms, Inc., have judgment for the sum found to be due it by said accounting and that the amount so found due be trebled.

3. That plaintiff Roscoe C. Zuckerman have judgment for the sum found to be due him by said accounting and that the amount so found due be trebled.

4. That plaintiff Mandeville Island Farms, Inc., have judgment against the defendant for $345,043.80 with interest from August 31, 1941, together with attorney fees in such sum as the court may deem reasonable.

5. That plaintiff Roscoe C. Zuckerman have judgment against the defendant for $112,192.14 with interest from August 31, 1941, together with attorney fees in such sum as the court may deem reasonable.

6. That plaintiff Mandeville Island Farms, Inc., have judgment against the defendant for the sum of $50,536.79 upon the second count, [24] together with interest thereon from August 31, 1941.

7. That plaintiff Roscoe C. Zuckerman have

judgment against the defendant for the sum of $47,853.64 upon the third count, together with interest thereon from August 31, 1942.

8. That plaintiffs have judgment for their costs herein involved and attorney fees.

9. That plaintiffs have such other and further relief as may be fit and proper in the premises.

/s/ WOOD, CRUMP, ROGERS & ARNDT
/s/ By STANLEY M. ARNDT
Attorneys for Plaintiffs

[Endorsed]: Filed July 30, 1945. [25]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS OR IN THE ALTERNATIVE TO STRIKE FROM COMPLAINT OR FOR A MORE DEFINITE STATEMENT OR FOR A BILL OF PARTICULARS

To Plaintiffs in the Above Entitled Action and to Messrs. Wood, Crump, Rogers & Arndt, Their Attorneys:

Please Take Notice that defendant above named will, on Monday, October 1, 1945, at the hour of 10:00 o'clock a. m., or as soon thereafter as counsel may be heard, move the above entitled court, in Court Room No. 6 thereof, in the United States

Court House and Post Office Building, Los Angeles, the Honorable Ben Harrison, Judge Presiding, as follows:

1. To dismiss the action because the complaint fails [26] to state a claim against defendant upon which relief can be granted.

2. To dismiss the first count attempted to be set forth in said complaint because the same fails to state a claim against defendant upon which relief can be granted.

3. To dismiss said first count because the same fails to state a claim against defendant upon which relief can be granted under the anti-trust laws of the United States, or any thereof.

4. To dismiss said first count because the same is barred by the provisions of Section 359 of the Code of Civil Procedure of California.

5. To dismiss the second count attempted to be set forth in said complaint because the same fails to state a claim against defendant upon which relief can be granted.

6. To dismiss the third count attempted to be set forth in said complaint because the same fails to state a claim against defendant upon which relief can be granted.

7. In the alternative, and in the event the above motion to dismiss are for any reason denied, to strike from the complaint, because immaterial, the following parts or portions thereof:

(a) The whole of paragraph numbered VIII, pages 5, 6.

(b) The whole of paragraph numbered X, page 7.

(c) That part of paragraph numbered XI appearing on page 10 thereof and reading as follows:

"The reasonable price for sugar beets for the crop years 1940 and 1941 were as determined by the Secretary of Agriculture and set forth in paragraph VIII hereof."

(d) The whole of paragraph numbered XV, pages 11, 12.

(e) The whole of subparagraph b of paragraph numbered XXVII, appearing on page 19 thereof.

(f) The whole of subparagraph b of paragraph numbered XXXVI, appearing on page 23 thereof.

8. In the alternative, and in the event the above motions to dismiss are for any reason denied, for a more definite statement or for a bill of particulars to enable defendant properly to prepare its responsive pleading and to prepare for trial. The defects complained of and the details desired are as follows:

(a) The failure to specify the facts, if any, warranting the conclusion of the pleader expressed in paragraph numbered VII on pages 7-8 that the purpose of the alleged conspiracy referred to in said paragraph was "to unlawfully monopolize and restrain commerce in sugar and sugar beets among the several states" or "to unlawfully fix prices to

be paid the growers of sugar beets" or that the activities complained of were "all in violation of the anti-trust laws of the United States."

(b) The failure to specify the facts, if any, warranting the conclusion of the pleader expressed in paragraph numbered XIII on pages 10-11, that as "a direct, expected and planned result of said conspiracy, the free and natural flow of commerce [28] in interstate trade was intentionally hindered and obstructed."

(c) The failure to specify how, or in what manner or to what extent, or with reference to what commodity, if any, the free and natural flow of commerce in interstate trade was intentionally or otherwise hindered or obstructed, as alleged.

(d) The failure to specify any facts warranting the inference or finding that the activities complained of in any way restrained or otherwise affected interstate commerce.

(e) The failure to specify any facts warranting the inference or finding that the damages assertedly suffered by plaintiffs or either of them, resulted proximately or at all from any act or acts prohibited by the anti-trust laws of the United States.

Said latter motion will be made upon the ground that none of the foregoing matters are alleged with sufficient definiteness or particularity to enable defendant properly to prepare its responsive pleading or to prepare for trial.

In order to facilitate the presentation, considera-

tion and discussion of the foregoing motions, and inasmuch as defendant does not understand that there is any controversy between the parties as to form or terminology of the standard form contracts referred to in the complaint, there are hereunto annexed, marked respectively Exhibits A, B, and C and made a part hereof, specimen of the same for the crop years 1939, 1940 and 1941.

Dated: September 15, 1945.

O'MELVENY & MYERS
PIERCE WORKS,
JOHN WHYTE
/s/ By PIERCE WORKS
Attorneys for Defendant.

EXHIBIT A

Form 3549-D—1500

MEMORANDUM OF AGREEMENT—
SEASON 1939

Between ..... Grower

AND

AMERICAN CRYSTAL SUGAR COMPANY
CLARKSBURG FACTORY

For delivery of Sugar Beets at.....

Witnesseth, that for and in consideration of the mutual covenants and payments hereinafter set out, the respective parties hereto mutually undertake and agree as follows, to-wit:

1. The Grower will prepare land for, plant,

block, thin, cultivate, irrigate, harvest, and deliver during the season of 1939, in compliance with the directions of the Company, as given from time to time,.....acres of sugar beets, to be grown on the following described land, to-wit: .....

.....

.....

.....State of California.

2. The seed to be used in growing said beets shall be furnished by the Company for the price of fourteen cents (14c) per pound, which the Grower agrees to pay. Seed furnished by the Company shall not be planted upon any land not contracted to the Company. Any seed furnished by the Company and not planted shall be returned in good order to the Company, at the end of the planting season, and the Grower credited therefor. No credit will be given for seed not returned prior to July 1, 1939.

3. The Grower agrees that at his own expense he will harvest and deliver to the Company all beets grown by him, said delivery to be made at such times and in such quantities and to such place or places as may be designated by the Company. All beets delivered hereunder shall be properly topped, that is to say, the tops shall be squarely cut off at the base of the bottom leaf in case of medium or small size beets, and the crown trimmed up from the base of the bottom leaf in the case of large beets, and shall be free from stones, trash, excess dirt, and foreign substances liable to interfere with factory work,

and shall be subject to proper deductions for tare. A distinct evidence of leaf scar is to be left after top tare is taken.

4. The Company has the privilege at various times during the growing and harvesting season to ascertain the quality of the beets grown under this contract by causing such beets to be sampled and polarized. The Company has the option of rejecting any beets where the above mentioned conditions have not been properly complied with, also any diseased or wilted beets or beets that are not suitable in the judgment of the Company for the manufacture of sugar, anything in this contract to the contrary notwithstanding.

In no event shall the Company be liable to the Grower for partial or complete failure of crop, or for any injury or damage to beets.

5. All sound beets grown in accordance with and under this contract shall be bought by the Company and paid for by it according to the following terms and schedule of prices:

The price per ton (2,000 pounds) for beets delivered hereunder to the Company shall be determined upon the average net returns (said net returns being defined in Paragraph No. 6 hereof) received for sugar manufactured at beet sugar factories located in California north of the 36th parallel, and sold during the period of twelve months commencing August 1, 1939, and based upon the Company's test of sugar content of the individual grower's beets in accordance with the following schedule:

PERCENTAGE SUGAR IN BEETS											
Net Return Received For Sugar	23%	22%	21%	20%	19%	18%	17%	16%	15%	14%	13%
VALUE OF ONE TON OF BEETS EXPRESSED IN DOLLARS AND CENTS											
5 cents	10.71	10.24	9.77	9.31	8.74	8.28	7.82	7.28	6.72	6.20	5.69
4¾ "	10.21	9.76	9.32	8.87	8.33	7.89	7.46	6.94	6.41	5.91	5.42
4½ "	9.70	9.28	8.86	8.44	7.92	7.51	7.09	6.60	6.09	5.62	5.15
4¼ "	9.00	8.61	8.22	7.83	7.35	6.97	6.58	6.12	5.65	5.21	4.78
4 "	8.30	7.94	7.58	7.22	6.78	6.42	6.07	5.64	5.21	4.81	4.41
3¾ "	7.60	7.27	6.94	6.61	6.21	5.88	5.56	5.17	4.77	4.40	4.04
3½ "	7.00	6.70	6.39	6.09	5.72	5.42	5.12	4.76	4.40	4.05	3.72
3¼ "	6.50	6.22	5.94	5.66	5.31	5.03	4.75	4.42	4.08	3.77	3.45

Intermediate sugar prices and beet tests in the same relative proportion as reflected in the interval in which such fluctuations occur. If sugar prices or sugar contents are higher or lower than those shown in the foregoing schedule, the settlement figure for such beets shall be increased or decreased according to the foregoing formula, using the immediately succeeding or preceding interval, as the case may be, as the basis for calculation, provided also that if the net return for sugar should fall below $3.25 per hundred, in such event the price per ton of beets hereinbefore fixed by this paragraph shall be further decreased in the proportion of one per cent (1%) for each five cents (5c) of decrease in the net return per one hundred pounds of sugar below $3.25.

Settlements will be made as follows:

For all beets delivered up to and including the end of any month, settlement will be made on or before the 15th of the succeeding month. The foregoing settlements will be made at as high an amount per ton as may be justified in the judgment of the Company based upon the Company's test of sugar content of the individual grower's beets and the Company's estimate of the net returns to be received for sugar sold during the twelve months period beginning August 1, 1939. Further settlements will be made on the aforesaid price of beets from time to time and in such amounts as the Company may deem to be justified by market conditions and quantity of sugar sold. Final settlement for all beets delivered hereunder shall be made in accordance

with the terms of this contract not later than August 31, 1940.

6. The net returns as aforesaid during said period shall be determined by a Certified Public Accountant, chosen by the Companies, (whose determination shall be final) by deducting from the gross sales price all such charges and expenditures as are regularly and customarily deducted from gross sales price of sugar, in accordance with the respective Companies' established systems of accounting, showing net returns from sugar sold, after deducting also all excise, sales, and other taxes, if any, either now or hereafter imposed by act of law or state or Federal regulation.

7. Any advances by the Company to the Grower either in seed, money, or otherwise, shall constitute a debt from the Grower to the Company which the Company shall have the right to collect as in the case of any other contractual obligation. The Company shall have the right, at its option, to treat any such advances as part payment for beets grown and delivered under this contract. Any such indebtedness which is due and payable or which may hereafter become due and payable from the Grower to the Company shall be, become, and remain a first and prior lien on the crop of sugar beets to the grown hereunder and shall be deducted by the Company from any initial or subsequent payments from the Company to the Grower which shall become due hereunder, or under any subsequent beet contract between the Company and the Grower. If the beet

crop to be grown hereunder is grown on leased land, payments to become due hereunder from the Company to the Grower shall be payable jointly to the Grower and the landlord unless the landlord shall have previously filed with the Company his written release in form satisfactory to the Company

8. The Grower may, at his own expense, have representatives (weighmen, taremen, and chemists) in scale house, tare room, and/or laboratory to inspect weights and work done, such representatives to be experienced in the line of work performed and satisfactory to the Company.

9. It is understood and agreed that if any governmental authority shall establish any restriction, allotment, or quota upon the growing, production, or processing of beets, or the output, transportation, or sale of beet sugar, then the Company may reduce to the extent necessary or required by lawful authority the acreage of beets herein contracted for, and shall be obligated to purchase only such reduced acreage of beets.

10. Fire, strikes, accidents, acts of God and of the public enemy, or other causes beyond the control of the parties which prevent the Grower from the performance of this contract or the Company from utilizing the beets contracted for in the manufacture of sugar therefrom, shall excuse the respective parties hereto from the performance of this contract.

11. The Company, at its sole option and elec-

tion, unless notified in writing by the Grower prior to July 1, 1939, not to make such deduction, is authorized to deduct from any monies coming due for beets delivered under this contract not to exceed the sum of two cents (2c) per net ton on the Grower's share of the beets delivered by the Grower hereunder, and to pay such amount to the Central California Beet Growers Association, Ltd.

12. No agent of the Company is authorized to make any alterations, erasures, or additions to this printed form of contract.

13. This agreement shall be binding upon both the Grower, his heirs, legal representatives, and assigns, and upon the Company, its successors and assigns, and shall not be transferable by the Grower without the written consent of the Company, its successors and assigns.

Executed in duplicate originals this.....
day of....., 193.....

AMERICAN CRYSTAL SUGAR COMPANY

By.....

.....Grower

.....Grower

EXHIBIT B

1500—3549-D—10-39

MEMORANDUM OF AGREEMENT—

SEASON 1940

Between ..... Grower

AND

AMERICAN CRYSTAL SUGAR COMPANY

CLARKSBURG FACTORY

Witnesseth, that for and in consideration of the mutual covenants and payments hereinafter set out, the respective parties hereto mutually undertake and agree as follows, to-wit:

1. The Grower will prepare land for, plant, block, thin, cultivate, irrigate, harvest, and deliver during the season of 1940,..... acres of sugar beets, to be grown on the lands described on the reverse side hereof.

2. The seed to be used in growing said beets shall be furnished by the Company for the price of fourteen cents (14c) per pound, which the Grower agrees to pay. Seed furnished by the Company shall not be planted upon any land not contracted to the Company. Any seed furnished by the Company and not planted shall be returned in good order to the Company, at the end of the planting season, and the Grower credited therefor. No credit will be given for seed not returned prior to July 1, 1940.

3. The Grower agrees that at his own expense he will harvest and deliver to the Company all beets grown by him, said delivery to be made at such times and in such quantities and to such place or places as may be designated by the Company. All beets delivered hereunder shall be properly topped, that is to say, the tops shall be squarely cut off at the base of the bottom leaf in case of medium or small size beets, and the crown trimmed up from the base of the bottom leaf in the case of large beets, and shall be free from stones, trash, excess dirt, and foreign substances liable to interfere with factory work, and shall be subject to proper deductions for tare. A distinct evidence of leaf scar is to be left after top tare is taken.

4. The Company has the privilege at various times during the growing and harvesting season to ascertain the quality of the beets grown under this contract by causing such beets to be sampled and polarized. The Company has the option of rejecting any beets where the above mentioned conditions have not been properly complied with, also any diseased or wilted beets or beets that are not suitable in the judgment of the Company for the manufacture of sugar, anything in this contract to the contrary notwithstanding.

In no event shall the Company be liable to the Grower for partial or complete failure of crop, or for any injury or damage to beets.

5. All sound beets grown in accordance with and under this contract shall be bought by the Company

and paid for by it according to the following terms and schedule of prices:

The price per ton (2,000 pounds) for beets delivered hereunder to the Company shall be determined upon the average net returns (said net returns being defined in Paragraph No. 6 hereof) received for sugar manufactured at beet sugar factories located in California north of the 36th parallel, and sold during the period of twelve months commencing August 1, 1940, and based upon the Company's test of sugar content of the individual grower's beets in accordance with the following schedule:

PERCENTAGE SUGAR IN BEETS											
Net Return Received For Sugar	23%	22%	21%	20%	19%	18%	17%	16%	15%	14%	13%
VALUE OF ONE TON OF BEETS EXPRESSED IN DOLLARS AND CENTS											
5 cents	10.71	10.24	9.77	9.31	8.74	8.28	7.82	7.28	6.72	6.20	5.69
4¾ "	10.21	9.76	9.32	8.87	8.33	7.89	7.46	6.94	6.41	5.91	5.42
4½ "	9.70	9.28	8.86	8.44	7.92	7.51	7.09	6.60	6.09	5.62	5.15
4¼ "	9.00	8.61	8.22	7.83	7.35	6.97	6.58	6.12	5.65	5.21	4.78
4 "	8.30	7.94	7.58	7.22	6.78	6.42	6.07	5.64	5.21	4.81	4.41
3¾ "	7.60	7.27	6.94	6.61	6.21	5.88	5.56	5.17	4.77	4.40	4.04
3½ "	7.00	6.70	6.39	6.09	5.72	5.42	5.12	4.76	4.40	4.05	3.72
3¼ "	6.56	6.22	5.94	5.66	5.31	5.03	4.75	4.42	4.08	3.77	3.45
3 "	5.55	5.31	5.07	4.83	4.53	4.30	4.06	3.77	3.49	3.21	2.95

Intermediate sugar prices and beet tests in the same relative proportion as reflected in the interval in which such fluctuations occur. If sugar prices or sugar contents are higher or lower than those shown in the foregoing schedule, the settlement figure for such beets shall be increased or decreased according to the foregoing formula, using the immediately succeeding or preceding interval, as the case may be, as the basis for calculation.

Settlements will be made as follows:

For all beets delivered up to and including the end of any month, settlement will be made on or before the 15th of the succeeding month. The foregoing settlements will be made at as high an amount per ton as may be justified in the judgment of the Company based upon the Company's test of sugar content of the individual grower's beets and the Company's estimate of the net returns to be received for sugar sold during the twelve months period beginning August 1, 1940. Further settlements will be made on the aforesaid price of beets from time to time and in such amounts as the Company may deem to be justified by market conditions and quantity of sugar sold. Final settlement for all beets delivered hereunder shall be made in accordance with the terms of this contract not later than August 31, 1941.

6. The net returns as aforesaid during said period shall be determined by a Certified Public Accountant, chosen by the Companies, (whose deter-

mination shall be final) by deducting from the gross sales price all such charges and expenditures as are regularly and customarily deducted from gross sales price of sugar, in accordance with the respective Companies' established systems of accounting, showing net returns from sugar sold, after deducting also all excise, sales, and other taxes, if any, either now or hereafter imposed by act of law or state or Federal regulation.

7. Any advances by the Company to the Grower either in seed, money, or otherwise, shall constitute a debt from the Grower to the Company which the Company shall have the right to collect as in the case of any other contractual obligation. The Company shall have the right, at its option, to treat any such advances as part payment for beets grown and delivered under this contract. Any such indebtedness which is due and payable or which may hereafter become due and payable from the Grower to the Company shall be, become, and remain a first and prior lien on the crop of sugar beets to be grown hereunder and shall be deducted by the Company from any initial or subsequent payments from the Company to the Grower which shall become due hereunder, or under any subsequent beet contract between the Company and the Grower.

8. The Grower may, at his own expense, have representatives (weighmen, taremen, and chemists) in scale house, tare room, and/or laboratory to inspect weights and work done, such representatives

to be experienced in the line of work performed and satisfactory to the Company.

9. It is understood and agreed that if any governmental authority shall establish any restriction, allotment, or quota upon the growing, production, or processing of beets, or the output, transportation, or sale of beet sugar, then the Company may reduce to the extent necessary or required by lawful authority the acreage of beets herein contracted for, and shall be obligated to purchase only such reduced acreage of beets.

10. Fire, strikes, accidents, acts of God and of the public enemy, or other causes beyond the control of the parties which prevent the Grower from the performance of this contract or the Company from utilizing the beets contracted for in the manufacture of sugar therefrom, shall excuse the respective parties hereto from the performance of this contract.

11. The Company, at its sole option and election, unless notified in writing by the Grower prior to July 1, 1940, not to make such deduction, is authorized to deduct from any monies coming due for beets delivered under this contract not to exceed the sum of two cents (2c) per net ton on the Grower's share of the beets delivered by the Grower hereunder, and to pay such amount to the Central California Beet Growers Association, Ltd.

12. The beet crop covered hereby is to be grown on land leased by the grower from.....

.....(hereinafter called "Landowner") whose address is....., wherefore, the Company is authorized to pay..... per cent of the gross amount due hereunder to the said Landowner, his heirs, personal representatives, or assigns.

13. No agent of the Company is authorized to make any alterations, erasures, or additions to this printed form of contract.

14. This agreement shall be binding upon both the Grower, his heirs, legal representatives, and assigns, and upon the Company, its successors and assign, and shall not be transferable by the Grower without the written consent of the Company, its successors and assigns.

Executed in duplicate originals this..... day of....., 19.....

Landowner .....

(To be signed by landowner or agent)

AMERICAN CRYSTAL SUGAR COMPANY

By.....

.....Grower

.....Grower

EXHIBIT C

1500—3549-D—11-40

MEMORANDUM OF AGREEMENT—SEASON 1941

Between ..... Grower

AND

AMERICAN CRYSTAL SUGAR COMPANY
CLARKSBURG FACTORY

Witnesseth, that for and in consideration of the mutual covenants and payments hereinafter set out, the respective parties hereto mutually undertake and agree as follows, to-wit:

1. The Grower will prepare land for, plant, block, thin, cultivate, irrigate, harvest, and deliver during the season of 1941,..... acres of sugar beets, to be grown on the lands described on the reverse side hereof.

2. The seed to be used in growing said beets shall be furnished by the Company for the price of thirteen cents (13c) per pound, which the Grower agrees to pay. Seed furnished by the Company shall not be planted upon any land not contracted to the Company. Any seed furnished by the Company and not planted shall be returned in good order to the Company, at the end of the planting season, and the Grower credited therefor. No credit will be given for seed not returned prior to July 1, 1941.

3. The Grower agrees that at his own expense he will harvest and deliver to the Company all beets grown by him, said delivery to be made at such times and in such quantities and to such place or places as may be designated by the Company. All beets delivered hereunder shall be properly topped, that is to say, the tops shall be squarely cut off at the base of the bottom leaf in case of medium or small size beets, and the crown trimmed up from the base of the bottom leaf in the case of large beets, and shall be free from stones, trash, excess dirt, and foreign substances liable to interfere with factory work, and shall be subject to proper deductions for tare. A distinct evidence of leaf scar is to be left after top tare is taken.

4. The Company has the privilege at various times during the growing and harvesting season to ascertain the quality of the beets grown under this contract by causing such beets to be sampled and polarized. The Company has the option of rejecting any beets where the above mentioned conditions have not been properly complied with, also any diseased or wilted beets or beets that are not suitable in the judgment of the Company for the manufacture of sugar, anything in this contract to the contrary notwithstanding.

In no event shall the Company be liable to the Grower for partial or complete failure of crop, or for any injury or damage to beets.

5. All sound beets grown in accordance with and under this contract shall be bought by the Company

and paid for by it according to the following terms and schedule of prices:

The price per ton (2,000 pounds) for beets delivered hereunder to the Company shall be determined upon the average net returns (said net returns being defined in Paragraph No. 6 hereof) received for sugar manufactured at beet sugar factories located in California north of the 36th parallel, and sold during the period of twelve months commencing August 1, 1941, and based upon the Company's test of sugar content of the individual grower's beets in accordance with the following schedule:

Net Return Received For Sugar	PERCENTAGE SUGAR IN BEETS										
	23%	22%	21%	20%	19%	18%	17%	16%	15%	14%	13%
VALUE OF ONE TON OF BEETS EXPRESSED IN DOLLARS AND CENTS											
5 cents	10.71	10.24	9.77	9.31	8.74	8.28	7.82	7.28	6.72	6.20	5.69
4¾ "	10.21	9.76	9.32	8.87	8.33	7.89	7.46	6.94	6.41	5.91	5.42
4½ "	9.70	9.28	8.86	8.44	7.92	7.51	7.09	6.60	6.09	5.62	5.15
4¼ "	9.00	8.61	8.22	7.83	7.35	6.97	6.58	6.12	5.65	5.21	4.78
4 "	8.30	7.94	7.58	7.22	6.78	6.42	6.07	5.64	5.21	4.81	4.41
3¾ "	7.60	7.27	6.94	6.61	6.21	5.88	5.56	5.17	4.77	4.40	4.04
3½ "	7.00	6.70	6.39	6.09	5.72	5.42	5.12	4.76	4.40	4.05	3.72
3¼ "	6.50	6.22	5.94	5.66	5.31	5.03	4.75	4.42	4.08	3.77	3.45
3 "	6.00	5.74	5.48	5.22	4.90	4.64	4.39	4.08	3.77	3.48	3.19

Intermediate sugar prices and beet tests in the same relative proportion as reflected in the interval in which such fluctuations occur. If sugar prices or sugar contents are higher or lower than those shown in the foregoing schedule, the settlement figure for such beets shall be increased or decreased proportionately, using the immediately succeeding or preceding interval, as the case may be, as the basis for calculation.

Settlements will be made as follows:

For all beets delivered up to and including the end of any month, settlement will be made on or before the 15th of the succeeding month. The foregoing settlements will be made at as high an amount per ton as may be justified in the judgment of the Company based upon the Company's test of sugar content of the individual grower's beets and the Company's estimate of the net returns to be received for sugar sold during the twelve months period beginning August 1, 1941. Further settlements will be made on the aforesaid price of beets from time to time and in such amounts as the Company may deem to be justified by market conditions and quantity of sugar sold. Final settlement for all beets delivered hereunder shall be made in accordance with the terms of this contract not later than August 31, 1942.

6. The net returns as aforesaid during said period shall be determined by a Certified Public Accountant, chosen by the Companies, (whose deter-

mination shall be final) by deducting from the gross sales price all such charges and expenditures as are regularly and customarily deducted from gross sales price of sugar, in accordance with the respective Companies' established systems of accounting, showing net returns from sugar sold, after deducting also all excise, sales, and other taxes, if any, either now or hereafter imposed by act of law or state or Federal regulation.

7. Any advances by the Company to the Grower either in seed, money, or otherwise, shall constitute a debt from the Grower to the Company which the Company shall have the right to collect as in the case of any other contractual obligation. The Company shall have the right, at its option, to treat any such advances as part payment for beets grown and delivered under this contract. Any such indebtedness which is due and payable or which may hereafter become due and payable from the Grower to the Company shall be, become, and remain a first and prior lien on the crop of sugar beets to be grown hereunder and shall be deducted by the Company from any initial or subsequent payments from the Company to the Grower which shall become due hereunder, or under any subsequent beet contract between the Company and the Grower.

8. The Grower may, at his own expense, have representatives (weighmen, taremen, and chemists) in scale house, tare room, and/or laboratory to inspect weights and work done, such representatives

to be experienced in the line of work performed and satisfactory to the Company.

9. It is understood and agreed that if any governmental authority shall establish any restriction, allotment, or quota upon the growing, production, or processing of beets, or the output, transportation, or sale of beet sugar, then the Company may reduce to the extent necessary or required by lawful authority the acreage of beets herein contracted for, and shall be obligated to purchase only such reduced acreage of beets.

10. Fire, strikes, accidents, acts of God and of the public enemy, or other causes beyond the control of the parties which prevent the Grower from the performance of this contract or the Company from utilizing the beets contracted for in the manufacture of sugar therefrom, shall excuse the respective parties hereto from the performance of this contract.

11. The Company, at its sole option and election, unless notified in writing by the Grower prior to July 1, 1941, not to make such deduction, is authorized to deduct from any monies coming due for beets delivered under this contract not to exceed the sum of two cents (2c) per net ton on the Grower's share of the beets delivered by the Grower hereunder, and to pay such amount to the Central California Beet Growers Association, Ltd.

12. The beet crop covered hereby is to be grown on land leased by the grower from.....

.....(hereinafter called "Landowner")
whose address is.....;
wherefore, the Company is authorized to pay.....
per cent of the gross amount due hereunder to the said Landowner, his heirs, personal representatives, or assigns.

13. No agent of the Company is authorized to make any alterations, erasures, or additions to this printed form of contract.

14. This agreement shall be binding upon both the Grower, his heirs, legal representatives, and assigns, and upon the Company, its successors and assign, and shall not be transferable by the Grower without the written consent of the Company, its successors and assigns.

Executed in duplicate originals this.....
day of....., 19.....
Landowner .....

(To be signed by landowner or agent)

AMERICAN CRYSTAL SUGAR COMPANY

By.....

.....Grower

.....Grower

State of California

County of Los Angeles—ss.

Marjorie McCoy being first duly sworn, on oath says:

That affiant is and was at the time of the service herein over the age of eighteen (18) years and not a party to the within proceeding; that she is a citizen of the United States and a resident of the County of Los Angeles, State of California; that her business address is 900 Title Insurance Building, 433 South Spring Street, Los Angeles 13, California;

That Wood, Crump, Rogers & Arndt are attorneys of record for plaintiff herein, and the office address of said attorneys is 458 South Spring Street, Los Angeles 13, California.

That on September 15, 1945, affiant served the within Notice of Motion to Dismiss or in the Alternative to Strike from Complaint or for a More Definite Statement or for Bill of Particulars upon counsel above named by depositing a true copy thereof in a United States mail box at Los Angeles, California, in a sealed envelope with postage thereon fully prepaid and addressed to said counsel as follows: Wood, Crump, Rogers & Arndt, 458 South Spring Street, Los Angeles, 13, California. That

there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ MARJORIE McCOY

Subscribed and sworn to before me this 15th day of September, 1945.

RUBY E. SLOANAKER
Notary Public in and for said
County and State

[Endorsed]: Filed Sept. 15, 1945. [33]

At a stated term, to-wit: The September Term, A. D. 1945, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 20th day of September in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

Good cause appearing therefor, it is hereby ordered that the motion to dismiss, etc., of defendant, filed Sept. 15, 1945, and noticed for hearing on Oct. 1, 1945, is hereby ordered continued to Nov. 12, 1945, at 10 a. m., for hearing. [34]

At a stated term, to-wit: The September Term, A. D. 1945, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 31st day of October in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

Good cause appearing therefor, it is hereby ordered that each of the above cases, now on the calendar for November 12, 1945, at 10 a. m., be continued to same time for hearing on November 13, 1945, and the Clerk is directed to notify counsel.

At a stated term, to-wit: The September Term, A. D. 1945, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 13th day of November in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

This cause coming on for hearing motion of the defendant to dismiss, or in the alternative, to strike

from the complaint, or for a more definite statement, or for a Bill of Particulars, pursuant to notice, motion, and points and authorities filed September 15, 1945; Stanley Arndt, Esq., appearing as counsel for the plaintiff; Pierce Works, Esq., appearing as counsel for the defendant:

Attorney Works makes a statement; the Court makes a statement; and Attorney Arndt makes a statement. It is ordered that the cause be, and it hereby is, continued to Nov. 19, 1945, at 11 a. m., for further hearing of said motions. [36]

At a stated term, to-wit: The September Term, A. D. 1945, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 19th day of November in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

This cause coming on for further hearing of motion of defendant to dismiss, or in the alternative, to strike from complaint, or for a more definite statement, or for a Bill of Particulars, pursuant to notice, motion, and points and authorities, and order of continuance heretofore entered:

It is ordered that the cause be, and it hereby is, continued to November 26, 1945, at 2 p. m., for further hearing of said motion. [37]

At a stated term, to-wit: The September Term, A. D. 1945, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 26th day of November in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

This cause coming on for further hearing of motion of defendant to dismiss, or in the alternative, to strike from complaint, or for a more definite statement, or for a Bill of Particulars, pursuant to notice, motion, and points and authorities, and order of continuance heretofore entered; Stanley Arndt, Esq., appearing as counsel for the plaintiff; Pierce Works, Esq., appearing as counsel for the defendant:

Attorney Arndt makes a statement and Attorney Works makes a statement. The Court makes a statement. Written stipulation is presented to the Court and order is signed thereon and the Court orders that said stipulation and order be filed, and that the further hearing of said motions of defendant to dismiss, etc., be stricken from the calendar.

[Title of District Court and Cause.]

STIPULATION AND ORDER

Whereas, in oral argument on November 13, 1945, on the motion of defendant to dismiss, etc., Hon. Ben Harrison, the United States District Judge before whom said matter was argued, stated from the bench to counsel herein that he felt that the first cause of action, if supplemented by copies of the contracts attached to the defendant's motion to dismiss, would not state facts sufficient to constitute a cause of action, and suggested that it would be a tremendous saving of time and expense if the complaint were amended (a) by setting forth copies of the agreements involved in the first count, (b) by eliminating what the Court considered an ambiguity in the complaint, and (c) by the parties entering into a stipulation to eliminate from the pleadings, for the purpose of the appeal only and without prejudice to the rights of the plaintiffs, the second and third causes of action, so as to enable the Court herein to pass upon the sufficiency of the first count on its merits and, further, [39] to make possible a speedy and inexpensive review by appeal if the Court held that the first count was insufficient;

Now, Wherefore, the parties stipulate, without plaintiffs' waiving their rights under the second and third counts and without prejudice to any of plaintiffs' rights thereunder, as follows, to-wit:

1. Plaintiffs will file an amended complaint herein, attaching copies of the forms of contract

in use in 1938, 1939, 1940 and 1941, and omitting the second and third counts.

2. Said omission of the said second and third counts shall be without prejudice to any of the rights of the plaintiffs as to any cause or causes of action included or includible therein by amendment, and shall not be a retraxit or a dismissal with prejudice.

3. Defendant herein waives, for the period of time hereinafter set forth, any and all statutes of limitations now or hereafter applicable to the second or third causes of action or any matters therein set forth or includible therein by amendment, and waives the defense of laches as to the second and third causes of action or any matters therein set forth or includible therein by amendment.

4. Plaintiffs may, at any time prior to six months after the decision on appeal as to the sufficiency of the first count has become final, either amend the amended complaint herein by realleging said second and third counts or any portion of either, or, at any time during said period, file a separate action or actions setting forth said second and third counts or any portion of either, all with the same force and effect as if said second and third counts were continuously included herein as second and third counts from the date of the commencement of this action.

5. The waiver of the statute of limitations and of the defense of laches herein set forth, and the stipulation permitting the amendment of the

amended complaint or the filing of a separate [40] action or actions hereinabove set forth, shall continue until six months after the determination on appeal as to the sufficiency of the first count has become final.

Read, Considered and Signed this 14 day of November, 1945.

WOOD, CRUMP, ROGERS & ARNDT,
By /s/ STANLEY M. ARNDT,
Attorneys for Plaintiffs.

O'MELVENY & MYERS,
By /s/ PIERCE WORKS,
Attorneys for Defendant.

AMERICAN CRYSTAL SUGAR COMPANY,
Defendant,

(Illegible)
Its President

(Illegible)
Its Secretary

It Is So Ordered.

/s/ BEN HARRISON
United States District Judge.

[Endorsed]: Filed Nov. 26, 1945. [41]

[Title of District Court and Cause.]

AMENDED COMPLAINT

Now come plaintiffs above named and with leave of court first had and obtained, file their Amended Complaint, and for cause of action allege:

I.

The grounds upon which the jurisdiction of the court depends are: (a) Diversity of citizenship; (b) this is an action brought by persons injured in their business and property by reason of acts of the defendant forbidden in the anti-trust laws of the United States, (15 U.S.C. Sec. 15) and brought in a district in which the defendant is found and has an agent.

II.

(a) Plaintiff Mandeville Island Farms, Inc. now is and at all times herein mentioned has been a corporation duly organized and [42] existing under and by virtue of the laws of and a citizen and inhabitant of the State of California, with its principal place of business in Stockton, San Joaquin County, California.

(b) Defendant American Crystal Sugar Company now is and at all times herein mentioned has been a corporation organized and existing under and by virtue of the laws of and a citizen and inhabitant of the State of New Jersey, with its principal office and place of business and executive departments in Denver, Colorado, and engaged in

trade and commerce among the several states of the United States. At all times herein mentioned, said defendant has been and now is qualified to do and doing business in California and in the above entitled district thereof as a foreign corporation and is found in the above entitled district and division of California and in various other parts of California. Its agent designated for service of process under and by virtue of the law of the State of California regarding foreign corporations, is, J. W. Rooney of Oxnard, Ventura County, in the above entitled district and division of California.

(c) Plaintiff Roscoe C. Zuckerman now is and at all times herein mentioned has been a citizen and inhabitant of the State of California and a resident of San Joaquin County in said State.

III.

(a) Plaintiffs Mandeville Island Farms, Inc. and Roscoe C. Zuckerman assert rights herein to relief in respect of or arising out of a series of transactions in which common questions of law and common questions of fact arise and are involved. The said transactions involve agricultural contracts identical in practically all material matters and respects for successive cropping seasons, each involving sugar beets to be grown and grown on Mandeville Island which is a tract of land located in California north of the 36th parallel.

(b) Said Mandeville Island at all times herein mentioned contained large areas of land suitable in composition, drainage, irrigation, location, cli-

mate and transportation facilities for the successful [43] raising of sugar beets suitable for processing into sugar. At all times herein mentioned plaintiffs have had supplies, equipment, tools, personnel, labor, organization, and knowledge adequate for the successful raising on Mandeville Island of sugar beets suitable for processing into raw sugar.

(c) A sugar crop season or year as referred to herein is from August 1st of any particular year to July 31st of the next calendar year and is commonly referred to herein by the year number of the calendar year in which it commences.

IV.

The matter in controversy herein exceeds, exclusive of interest, costs, and attorney fees, the sum of $3,000.00.

V.

On September 11, 1939, the second world war broke out and thereafter and up to December 7, 1941, the United States was in danger of being drawn into said conflict and was preparing its defenses against its possible entry into said conflict. On December 7, 1941 the Japanese attacked the United States at Pearl Harbor. This was followed by declaration of war between the United States and all the members of the Axis. At all times from September 11, 1939, the sugar beet industry was and now is one of the vital industries of the United States and the growing of sufficient sugar beets to provide for national demands and defense and for the beet sugar stock pile necessary for military

purposes was a matter of national welfare. As a result, the United States Government rationed the use of sugar in the United States and said rationing still continues. The various steps involved in the production and protection of beet sugar, including the growing of sugar beets, the harvesting thereof, the delivering of the beets to the manufacturer, the processing into sugar and the sale and distribution of sugar in interstate commerce to the ultimate consumer, were at all times herein mentioned and now [44] are inextricably intermingled with and directly affected by each other and have an immediate relation on each other. Each of said steps was at all times herein mentioned and now is a part of a transaction that commenced when the ground was prepared for planting the sugar beet seed and was completed when the sugar was used by the ultimate consumer.

VI.

(a) During the crop seasons 1938 to 1942, both inclusive, large acreages of agricultural land in the United States, including that portion of California north of the 36th parallel, Utah, Colorado, Michigan, Idaho, Illinois, Arizona and other states were planted to sugar beets. Said sugar beets, when harvested, were not sold in central markets as were potatoes, onions, corn, grain, fruit and berries, but were produced by growers under contract with manufacturers or processors and immediately upon being harvested were delivered to these manufacturers and taken to their beet sugar refineries

where the sugar beets were manufactured by an elaborate process into raw sugar by the said manufacturers, who thereafter sold the resulting sugar in interstate commerce. Said sugar beets, when harvested, were bulky and semi-perishable and incapable of being transported over long distances or of being stored cheaply or safely for any extended period. Said sugar beets, when ripe, deteriorated rapidly if kept in the ground and not harvested, and it was necessary to harvest them promptly when matured.

(b) The only practical market available to growers of sugar beets in California north of the 36th parallel during said period was sale to one of the three manufacturers that operated one or more beet sugar refineries in said district. Defendant was one of said three manufacturers. The initial outlay for the construction of a beet sugar refinery was so great, the annual upkeep and operating expenses were so large, and the time involved in erecting and equipping a beet sugar refinery so long that no competition from any new [45] refinery could be expected within a period of time shorter than two years, even if the necessary material and equipment priorities could be secured. During all of said period, said three manufacturers of sugar beets had a complete monopoly of the supply of sugar beet seeds and in the manufacture of sugar beets into sugar in California north of the 36th parallel and owned and controlled all sugar beet factories in said area of California which manufactured sugar beets into sugar, and no grower of

sugar beets in California north of the 36th parallel could, during any part of said period, sell sugar beets at a profit except to one of said manufacturers.

(c) The sugar manufactured from said sugar beets was, during all of said period, sold in interstate commerce throughout the United States.

(d) After the raw sugar had been produced, it was impossible to distinguish the manufactured beet sugar manufactured from sugar beets grown in any one part of the United States from that manufactured from sugar beets grown in any other part of the United States.

(e) During said period above referred to, the only sugar beet seeds available in said portion of California were those securable from one of said three manufacturers and the only method of sale of marketable sugar beets used by growers of sugar beets in said area of California was by sale to one of the said three manufacturers under standard form printed contracts prepared by the manufacturers whereby the price to be paid by the manufacturer to the grower of sugar beets was determined for beets of a given sugar content by the net price received from the sale in interstate commerce of the raw sugar manufactured from the sugar beets delivered by the various growers to the manufacturers. A grower who did not enter into one of said standard forms of contract could not get seed from any source and was unable to grow any sugar beets. [46]

VII.

In and by said standard contract, the grower agreed (a) to plant a specified acreage to sugar beets with seed furnished by the manufacturers to the grower at grower's cost, (b) to cultivate said land after the same had been planted and to care for and harvest the sugar beets, and (c) to deliver the beets so harvested to the manufacturers. The manufacturer agreed in and by said contract (a) to accept delivery of said sugar beets from the grower, except that the manufacturer had the right to reject any beets that were diseased, wilted or not suitable for the manufacturer of sugar, (b) to manufacture into sugar the sugar beets accepted by it, (c) to make on the 15th day of each month an advance payment for the sugar beets delivered during the preceding month, based on the estimate made by the manufacturer of the sugar sold and to be sold which had been manufactured from beets produced by the grower and other growers under like contracts, and (d) to make final (in point of time) payment for all beets on or before August 31st of the next crop year, the price to be paid for said beets to be determined by the sugar content of the beets of the individual grower and the net return received from the sale of the manufactured raw sugar in interstate commerce.

VIII.

Prior to the crop reason of 1939 and subsequent to the crop season of 1941, the net return from the sale of manufactured raw sugar was determined

under the contracts by the net return from the sale of raw sugar manufactured in beet sugar factories of the particular contracting manufacturer from beets delivered to said manufacturer by the grower and other growers in the same area during the particular crop season, in accordance with the schedule set forth in the standard contract. Attached hereto and marked Exhibit "A" is a copy of the standard contract for the crop season of 1938. It is incorporated herein by reference. But during the crop seasons of [47] 1939, 1940 and 1941, pursuant to the conspiracy hereinafter referred to, the standard printed contract as used by all of said manufacturers provided that the net return used as a basis for the prices to be paid the grower was the average net return of all manufacturers manufacturing sugar north of the 36th parallel in California and not the net return of the particular manufacturer with whom the grower contracted and to whom the beets were delivered and by whom the beets were manufactured into raw sugar.

IX.

Thereupon and some time in 1937 or 1938, at a time unknown to plaintiffs but particularly within the knowledge of defendant, said defendant illegally and wrongfully entered into a conspiracy with each and every one of the other manufacturers of sugar in California whose plants were located north of the 36th parallel to unlawfully monopolize and restrain trade and commerce among the several states and to unlawfully fix prices to be paid the growers

of sugar beets, all in violation of the anti-trust laws of the United States, and as a part of said unlawful conspiracy agreed among themselves to do and did as follows during the crop years 1939, 1940, and 1941.

(a) Each no longer competed against any of the others as to the price to be paid the growers for sugar beets raised in California north of the 36th parallel.

(b) Each paid the same price to growers of sugar beets in California north of the 36th parallel and no more, to-wit: the price determined upon the average net returns from the sale of raw sugar of all sugar manufactured in the plants of said conspirators north of the 36th parallel in California and did not pay the growers upon the net returns from the sale of sugar manufactured in California north of the 36th parallel by the particular manufacturer to whom the particular grower was under contract.

(c) Each no longer competed with any of the other manufacturers of sugar north of the 36th parallel as to efficiency of sales or [48] manufacturing organizations, but instead, and regardless of the efficiency or lack of efficiency of the sales or manufacturing organization of any of the conspirators, and regardless of the price at which sugar was sold from any particular refinery or from any particular manufacturer's refinery or refineries, paid all growers of sugar beets in California north of

the 36th parallel, the same price for the same amount of beets of the same sugar content.

(d) Instead of paying the growers of sugar beets a reasonable price for their beets, each of said conspirators furnished seeds to, entered into contracts with and bought seeds only from growers who signed a standard printed form of contract prepared by said manufacturers, identical in all material terms. Farmers contemplating or desirous of growing sugar beets either signed such a contract with one of said conspirators or could not get seeds to plant sugar beets or a market to sell their marketable beets except for hog or cattle feed at a large loss. Attached hereto and marked Exhibits "B", "C" and "D", respectively, are the said standard printed form contracts for the crop years 1939, 1940 and 1941.

(e) Said prices agreed upon by defendant and its co-conspirators to be paid by them and paid by them to plaintiffs and other sugar beet growers in California north of the 36th parallel and set forth in said Exhibits "B", "C" and "D" are not the reasonable prices for sugar beets. The reasonable prices for sugar beets for the crop years 1940 and 1941 were as determined by the Secretary of Agriculture and set forth in paragraph XIV hereof.

X.

Prior to the 1939 crop season, the various manufacturers of sugar in California north of the 36th parallel, including defendant, competed in interstate commerce with each other as to the perform-

ance, [49] ability and efficiency of their manufacturing, sales and executive departments, and each strove to increase sales return and decrease expenses and to operate as efficiently as possible and thus to increase the unit return to growers of sugar beets under said standard contract. During the sugar beet crop year of 1938, the net gross receipts of sales of sugar, (less allowances, federal excise taxes, freight to destination, and cash discounts to customers) secured by defendant were 3.641 cents per pound while, at the same time, the like average net gross receipts from the other manufacturers of beet sugar in California north of the 36th parallel were 3.348 cents per pound, or .265 cents less than the net gross receipts secured by defendant. As a result thereof, during the crop year 1938, sugar beet growers in California north of the 36th parallel who had contracted with defendant received on the average from 29½ cents to 52½ cents per ton more for sugar beets delivered to defendant corporation under said standard contract than did growers of identical beets of identical sugar content delivered to the other manufacturers of beet sugar in California north of the 36th parallel.

XI.

During said crop seasons of 1939, 1940 and 1941, as a direct result of said conspiracy, expected and planned by said conspirators, there was no longer any such competition between the conspirators. Plaintiffs are informed and believe and upon such information and belief allege that defendant, as a

result of said conspiracy, did not during said crop-seasons of 1939, 1940 and 1941, conduct its interstate operations in as efficient and careful manner as it had prior thereto (when there was no conspiracy but was competition between itself and the other manufacturers), or in as efficient or careful manner as it would have had said conspiracy not existed. As a result thereof, defendant received less in sales returns for its raw sugar and incurred more expense in its operations in said [50] crop years than it would have had competition been free from and unrestrained by said conspiracy and plaintiffs did not receive the reasonable value of their sugar beets.

XII.

As a direct, expected and planned result of said conspiracy, the free and natural flow of commerce in interstate trade was intentionally hindered and obstructed, and, instead of defendant and the other said manufacturers producing and selling raw sugar in interstate commerce with individual enterprise and sagacity, and in competition with each other as they had previously done, they became illegally associated in a common plan wherein they pooled their receipts and expenses and frustrated the free enterprise system which it was and is the purpose of the anti-trust acts to protect and which had existed prior to said conspiracy. As a further direct, expected and planned result of said conspiracy, any and all incentive that theretofore existed for defendant and the other said manufacturers to be efficient and economical and to develop

individual enterprise and sagacity, disappeared, and, during said crop seasons, said three manufacturers operated, in so far as the growers were concerned, as if they were one corporation owning and controlling all sugar beet factories in California north of the 36th parallel but with three completely separate overheads and with none of the efficiency that consolidation into one corporation might bring.

XIII.

Said conspiracy continued throughout the crop years of 1939, 1940 and 1941, and until August 31, 1942, when the last payment was made under the 1941 standard contract and said conspiracy has been continued thereafter up to the present time in so far as defendant and each of its co-conspirators still refuse and will not make payments to any of the growers other than in accordance with the method agreed upon in said conspiracy as above set forth, and will not furnish any of the growers the individual, as contrasted with [51] the pooled, sales return of the particular manufacturer with whom said grower dealt. Plaintiffs herein demanded in writing such information of defendant but defendant refused to and has not furnished the same.

XIV.

(a) Defendant and the other manufacturers of sugar referred to herein were at all times herein mentioned growers of sugar beets and "producers on the farm" of sugar beets and "processors of sugar beets" as those respective phrases are and

were used in the Sugar Act of 1937. Plaintiff is informed and believes and upon such information alleges that each of said persons received payments for the crop years 1939, 1940, and 1941 from the Secretary of Agriculture in accordance with Sec. 301 of the said Sugar Act. (7 U.S.C. 1131). Claude R. Wickard was at all times mentioned in this paragraph the duly appointed, qualified and acting Secretary of Agriculture. On December 2, 1940, said Secretary of Agriculture, after due notice to all interested parties (including defendant and all other manufacturers of sugar in California) and after public hearings duly held and after investigations duly made, did pursuant to Section 301d of said Sugar Act (7 U.S.C. 1131 (d)) make the following determination of the fair and reasonable price for the 1940 and 1941 crops of sugar: (5 Fed. Reg. 5231):

"Fair and reasonable prices for the 1940 and 1941 crops of sugar beets. The requirements of subsection (d) of section 301 of the Sugar Act of 1937, as amended, shall be deemed to have been fulfilled with respect to the 1940 and 1941 California crops of sugar beets if the producer-processor shall have paid rates for any sugar beets processed by him equal to those provided in the following schedule: [52]

Percentum sucrose in beets	Average net return per 100 lbs. of sugar				
	$4.00	$3.75	$3.50	$3.25	$3.00
	Price per ton of sugar beets				
19	$7.12	$6.65	$6.18	$5.70	$5.22
18	6.66	6.21	5.76	5.31	4.86
17	6.20	5.78	5.36	4.93	4.50
16	5.76	5.36	4.96	4.56	4.16
15	5.32	4.95	4.58	4.20	3.82
14	4.90	4.55	4.20	3.85	3.50

(Payments upon intermediate sugar prices and sugar content, or sugar prices or sugar content, higher or lower than those shown in the foregoing schedule, shall be on the same proportionate basis.)

Provided, however that in no event shall the average net return used as the settlement basis be determined by averaging the net proceeds realized from the sale of sugar by more than one producer-processor: And provided further, that a haulage allowance at a rate not less than 2½ cents per mile per ton shall be granted to growers who perform such service in areas in which allowances have been agreed upon between producer-processors and growers.

(b) No appeal has been taken from said determination and any time to appeal has expired; it has not been modified, abrogated, cancelled, or withdrawn, but has become final. The fair and reasonable prices for sugar beets for the 1940 and 1941 California crops are as set forth in said determination.

(c) The said determination of the Secretary of Agriculture under the Sugar Act of 1937 as to the

fair and reasonable prices for the 1940 and 1941 California crops of sugar beets was made December 21, 1940, and was published in the Federal Register on December 24, 1940, as aforesaid, but, nevertheless, defendant and its said co-conspirators, each of whom took part in the said hearings held by the Secretary of Agriculture, and each of whom well knew of the [53] determination, persisted thereafter in their said conspiracy and would not buy beets from growers in California north of the 36th parallel except under the terms and conditions set forth in said standard agreement.

XV.

On November 14, 1938, defendant and plaintiff Mandeville Island Farms, Inc., entered into one of defendant's standard form contracts for the 1939 crop season under which defendant promised to pay said plaintiff on August 31, 1940, for the sugar beets delivered thereunder. Said plaintiff performed each and every term, condition and covenant on its part to be performed in said contract and during the crop year 1939 delivered to defendant 22,355.6 tons of sugar beets of an average sugar content of 18.25% from Mandeville Island, which beets were accepted by defendant and manufactured by it into sugar. Said plaintiff does not know when said sugar beets were manufactured into sugar by defendant. Said information is particularly within the knowledge of defendant. Said plaintiff has requested said information but defendant has refused to furnish and has not furnished the same to plaintiff.

XVI.

On December 29, 1939, defendant and plaintiff Mandeville Island Farms, Inc., entered into one of defendant's standard form contracts for the 1940 crop season under which defendant promised to pay said plaintiff on August 31, 1941, for the sugar beets delivered thereunder. Said plaintiff performed each and every term, condition and covenant on its part to be performed in said contract and during the crop year 1940 delivered to defendant 25,430.3 tons of sugar beets of an average sugar content of 15.55% from said Mandeville Island, which beets were accepted by defendant and manufactured into sugar. Said plaintiff does not know when said beets were manufactured into sugar by defendant. Said information [54] is particularly within the knowledge of defendant. Said plaintiff has requested said information but defendant has refused to furnish and has not furnished the same to plaintiff.

XVII.

On June 23, 1941, defendant and plaintiff Roscoe C. Zuckerman entered into one of defendant's standard form contracts for the 1941 crop season under which defendant promised to pay plaintiff on August 31, 1942, for the sugar beets delivered thereunder. Said plaintiff performed each and every term, condition and covenant on its part to be performed in said contract and during the crop year 1941 delivered to defendant 14,144.7 tons of sugar beets of an average sugar content of 15.47% from said Mandeville Island, which beets were ac-

cepted by defendant and manufactured by it into sugar. Said plaintiff does not know when said sugar beets were manufactured into sugar by defendant. Said information is particularly within the knowledge of defendant. Said plaintiff has requested said information but defendant has refused to furnish and has not furnished the same to plaintiff.

XVIII.

Defendant paid plaintiffs for their 1939, 1940 and 1941 crops of sugar beets on August 31 of 1940, 1941 and 1942, respectively, but in carrying out said conspiracy and as a part and parcel thereof, said defendant paid plaintiff on said respective dates, not upon the price secured in interstate commerce from sugar manufactured from beets delivered by plaintiff and other growers located north of the 36th parallel to the refineries of defendant located north of the 36th parallel, as defendant had paid growers prior to the 1939 crop year and not upon the prices and the bases determined by the Secretary of Agriculture to be fair and reasonable as aforesaid; but paid them in accordance with the average net return secured in interstate commerce for sugar by all manufacturers of beet sugar with refineries [55] in California north of the 36th parallel and in accordance with the schedule set forth in the said standard contracts. Plaintiffs are informed and believe and upon such information and belief allege that the net sales return secured from sugar sold by defendant was greater than the average secured by all manufacturers of sugar north

of the 36th parallel. Had it not been for said unlawful plan and conspiracy and if said sugar had been manufactured and sold in interstate commerce in competition with the sugar of the co-conspirators, unhampered by said plan and conspiracy, plaintiff Mandeville Island Farms, Inc., would have received at least $105,014.60 more and plaintiff Roscoe C. Zuckerman would have received at least $37,397.38 more than each did receive under said contracts and said plaintiffs, respectively, sustained damages accordingly, none of which damage has been paid. The exact amount that plaintiffs were damaged, as aforesaid, can only be determined by an accounting in that defendant has refused all requests and demands of plaintiffs for information on which plaintiffs could determine and could herein plead the specific amounts due to plaintiffs. Plaintiffs are entitled by virtue of paragraph 15 of the anti-trust laws of the United States (15 U.S.C., Sec. 15) to have such damages trebled.

XIX.

By reason of the foregoing acts of the defendant and its said conspirators, interstate commerce in sugar was illegally restrained, competition therein was not only substantially lessened but was destroyed, the price of sugar beets was illegally fixed, and an illegal monopoly was established, all in violation of the anti-trust laws of the United States, to the damage of plaintiffs as aforesaid.

XX.

Plaintiffs, in order to enforce their rights against

defendant, employed the services of attorneys at law and, under the anti-trust laws of the United States (15 U.S.C. Sec. 15), are entitled to [56] reasonable attorneys' fees, the amount of which will depend upon the amount of work necessary to be performed herein by said attorneys.

XXI.

From October 10, 1942, to June 30, 1945, the statute of limitations applicable to the within set forth violations of the anti-trust laws of the United States was suspended by reason of the amendment of 16 U.S.C. Sec. 16, passed October 10, 1942, (Acts of Congress October 10, 1942, Ch. 589; 56 Stat. 781, U.S.C. 1940 ed., Sup. IV, p. 185; 15 U.S.C.A. 1944 Cum. An. P. P. Title 15, Sec. 16, p. 76), which was in full force and effect between October 10, 1942, and June 30, 1945.

Wherefore, plaintiffs pray judgment against defendant as follows:

1. That defendant be required to account to plaintiffs in connection with all sugar beets delivered by plaintiffs to defendant during the crop years 1939, 1940, and 1941, and for all sugar manufactured therefrom and sold by said defendant.

2. That plaintiff Mandeville Island Farms, Inc., have judgment for the sum found to be due it by said accounting and that the amount so found due be trebled.

3. That plaintiff Roscoe C. Zuckerman have judgment for the sum found to be due him by said

accounting and that the amount so found due be trebled.

4. That plaintiff Mandeville Island Farms, Inc., have judgment against the defendant for $315,043.80 with interest from August 31, 1941, together with attorney fees in such sum as the court may deem reasonable.

5. That plaintiff Roscoe C. Zuckerman have judgment against the defendant for $112,192.14 with interest from August 31, 1941, together with attorney fees in such sum as the court may deem [57] reasonable.

6. That plaintiffs have judgment for their costs herein involved and attorney fees.

7. That plaintiffs have such other and further relief as may be fit and proper in the premises.

WOOD, CRUMP, ROGERS & ARNDT

/s/ STANLEY M. ARNDT

Attorneys for Plaintiffs [58]

EXHIBIT A

Form 3549-D—1000

MEMORANDUM OF AGREEMENT—SEASON 1938

Between ..... Grower

AND

AMERICAN CRYSTAL SUGAR COMPANY

CLARKSBURG FACTORY

For delivery of Sugar Beets at.....

Witnesseth, that for and in consideration of the mutual covenants and payments hereinafter set out, the respective parties hereto mutually undertake and agree as follows, to-wit:

1. The Grower will prepare land for, plant, block, thin, cultivate, irrigate, harvest and deliver during the season of 1938, in compliance with the directions of The Company, as given from time to time, ...acres of sugar beets, to be grown on the following described land, to-wit: .....

.....

.....

.....State of California.

2. The seed to be used in growing said beets shall be furnished by The Company for the price of fourteen (14) cents per pound, which The Grower agrees to pay. Seed furnished by The Company shall not be planted upon any land not contracted to The Com-

pany. Any seed furnished by The Company and not planted shall be returned in good order to The Company, at the end of the planting season, and The Grower credited therefor. No credit will be given for seed not returned prior to July 1, 1938.

3. The Grower agrees that beets hereunder shall not be irrigated after July 15, 1938, except by written permission of The Company.

4. The grower agrees that at his own expense he will harvest and deliver to the Company all beets grown by him, said delivery to be made at such times and in such quantities and to such place or places as may be designated by the Company. All beets delivered hereunder shall be properly topped, that is to say, the tops shall be squarely cut off at the base of the bottom leaf in case of medium or small size beets, and the crown trimmed up from the base of the bottom leaf in the case of large beets, and shall be free from stones, trash, excess dirt, and foreign substances liable to interfere with factory work, and shall be subject to proper deductions for tare. A distinct evidence of leaf scar is to be left after top tare is taken.

5. The Company has the privilege at various times during the growing and harvesting season to ascertain the quality of the beets grown under this contract by causing such beets to be sampled and polarized. The Company has the option of rejecting any beets where the above mentioned conditions have not been properly complied with, also any diseased or wilted beets, beets of less than 12% sugar,

or less than 80% purity, or beets that are not suitable in the judgment of The Company for the manufacture of sugar, anything in this contract to the contrary notwithstanding.

In no event shall the Company be liable to the Grower for partial or complete failure of crop, or for any injury or damages to beets.

6. All sound beets grown in accordance with and under this contract shall be bought by the Company and paid for by it according to the following terms and schedule of prices:

The price per ton (2,000 pounds) for beets delivered hereunder to the Company shall be determined upon the average net returns (said net returns being defined in Paragraph No. 7 hereof) per one hundred pounds of sugar received by The Company from sugar manufactured at its Clarksburg Factory, and sold by The Company during the period of twelve months commencing August 1, 1938, and based upon The Company's test of the sugar content of the individual grower's beets in accordance with the following schedule:

Net Price Received For Sugar	PERCENTAGE SUGAR IN BEETS										
	23%	22%	21%	20%	19%	18%	17%	16%	15%	14%	13%
VALUE OF ONE TON OF BEETS EXPRESSED IN DOLLARS AND CENTS											
5.00	10.71	10.24	9.77	9.31	8.74	8.28	7.82	7.28	6.72	6.20	5.69
4.75	10.21	9.76	9.32	8.87	8.33	7.89	7.46	6.94	6.41	5.91	5.42
4.50	9.70	9.28	8.86	8.44	7.92	7.51	7.09	6.60	6.09	5.62	5.15
4.25	9.00	8.61	8.22	7.83	7.35	6.97	6.58	6.12	5.65	5.21	4.78
4.00	8.30	7.94	7.58	7.22	6.78	6.42	6.07	5.64	5.21	4.81	4.41
3.75	7.60	7.27	6.94	6.61	6.21	5.88	5.56	5.17	4.77	4.40	4.04
3.50	7.00	6.70	6.39	6.09	5.72	5.42	5.12	4.76	4.40	4.05	3.72
3.25	6.50	6.22	5.94	5.66	5.31	5.03	4.75	4.42	4.08	3.77	3.45

Intermediate sugar prices and beet tests in the same relative proportion as reflected in the interval in which such fluctuations occur. If sugar prices or sugar contents are higher or lower than those shown in the foregoing schedule, the settlement figure for such beets shall be increased or decreased according to the foregoing formula, using the immediately succeeding or preceding interval, as the case may be, as the basis for calculation, provided also that if the net return for sugar should fall below $3.25 per hundred, in such event the price per ton of beets hereinbefore fixed by this paragraph shall be further decreased in the proportion of one per cent (1%) for each five cents (5c) of decrease in the net return per one hundred pounds of sugar below $3.25.

Settlements will be made as follows:

For all beets delivered up to and including the end of any month, settlement will be made on or before the 15th of the succeeding month. The foregoing settlements will be made at as high an amount per ton as may be justified in the judgment of the Company based upon the Company's test of sugar content of the individual grower's beets and the Company's estimate of the net returns to be received by it for sugar sold during the twelve months period beginning August 1, 1938. Further settlements will be made on the aforesaid price of beets from time to time and in such amounts as the Company may deem to be justified by market conditions and quantity of sugar sold. Final settlement for all beets delivered hereunder shall be made in accordance

with the terms of this contract not later than August 31, 1939.

7. The net return on sugar sold as aforesaid during said period shall be determined by deducting, from the gross sales price, selling expenses directly applicable to sugar consisting of freight, discount, brokerage, storage, shipping and handling, loss and damage, insurance, advertising, salaries, traveling expenses and sundry expenses, and also any expenses or taxes occasioned by act of law or State or Federal regulation. The Company will furnish for the inspection of growers a certified statement by certified public accountants, not connected with The Company, of the net receipts from sugar sold, in accordance with this contract.

8. Any advances by the Company to the Grower either in seed, money, or otherwise, shall constitute a debt from the Grower to the Company which the Company shall have the right to collect as in the case of any other contractual obligation. The Company shall have the right, at its option, to treat any such advances as part payment for beets grown and delivered under this contract. Any such indebtedness which is due and payable or which may hereafter become due and payable from the Grower to The Company shall be, become and remain a first and prior lien on the crop of sugar beets to be grown hereunder and shall be deducted by The Company from any initial or subsequent payments from The Company to The Grower which shall become due hereunder, or under any subsequent beet contract be-

tween the Company and the Grower. If the beet crop to be grown hereunder is grown on leased land, payments to become due hereunder from the Company to the Grower shall be payable jointly to the Grower and the landlord unless the landlord shall have previously filed with the Company his written release in form satisfactory to the Company

9. The Grower may, at his own expense, have representatives (weighmen, taremen, and chemists) in scale house, tare room, and/or laboratory to inspect weights and work done, such representatives to be experienced in the line of work performed and satisfactory to the Company.

10. It is understood and agreed that if any governmental authority shall establish any restriction, allotment, or quota upon the growing, production, or processing of beets, or the output, transportation, or sale of beet sugar, then the Company may reduce to the extent which it deems necessary the quantity of beets herein contracted for, and shall be obligated to purchase only such reduced quantity.

11. Fire, strikes, accidents, acts of God and of the public enemy, or other causes beyond the control of the parties which prevent the Grower from the performance of this contract or the Company from utilizing the beets contracted for in the manufacture of sugar therefrom, shall excuse the respective parties hereto from the performance of this contract.

12. The Company, at its sole option and election, unless notified in writing by the Grower prior

to July 1, 1938, not to make such deduction, is authorized to deduct from any monies coming due for beets delivered under this contract not to exceed the sum of two cents (2c) per ton on the Grower's share of the beets delivered by the Grower hereunder, and to pay such amount to the Central California Beet Growers Association, Ltd.

13. No agent of The Company is authorized to make any alterations, erasures or additions to this printed form of contract.

14. This agreement shall be binding upon both The Grower, his heirs, legal representatives and assigns, and upon The Company, its successors and assigns, and shall not be transferable by The Grower without the written consent of The Company, its successors and assigns.

Executed in duplicate originals this.....
day of....., 193.....

AMERICAN CRYSTAL SUGAR COMPANY

By.....

.....Grower

.....Grower

[Printer's Note: Exhibits "B", "C" and "D" are similar to Exhibits "A", "B" and "C", set out in full at pages 36 to 59 inclusive of this Record.]

[Endorsed]: Filed Dec. 1, 1945.

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS OR IN THE ALTERNATIVE TO STRIKE FROM AMENDED COMPLAINT

To Plaintiffs in the above entitled action and to Messrs. Wood, Crump, Rogers & Arndt, their Attorneys:

Please Take Notice that defendant above named will, on Monday, December 17, 1945, at the hour of 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, move the above entitled court, in Court Room No. 6 thereof, in the United States Court House and Post Office Building, Los Angeles, the Honorable Ben Harrison, Judge Presiding, as follows:

1. To dismiss the action because the amended complaint [63] fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action because the amended complaint fails to state a claim against defendant upon which relief can be granted under the anti-trust laws of the United States, or any thereof.

3. To dismiss the action in so far as it purports to state a cause of action under any California statute because the same is barred by the provisions of Section 359 of the Code of Civil Procedure of California.

4. In the alternative, and in the event the above motion to dismiss is for any reason denied, to strike from the amended complaint, because immaterial, the following parts or portions thereof:

a. The whole of paragraph numbered XIV, pages 11-13.

b. That part of paragraph IX appearing on page 8 thereof and reading as follows:

"The reasonable prices for sugar beets for the crop years 1940 and 1941 were as determined by the Secretary of Agriculture and set forth in paragraph XIV hereof."

Dated: December 7, 1945.

O'MELVENY & MYERS
PIERCE WORKS
JOHN WHYTE
/s/ PIERCE WORKS
Attorneys for Defendant

[Endorsed]: Filed Dec. 8, 1945. [64]

At a stated term, to-wit: The September Term, A.D., 1945, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 17th day of December in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

This cause coming on for hearing motions of defendant to dismiss, or in the alternative, to strike from the Amended Complaint, pursuant to notice,

motions, and points and authorities filed December 8, 1945; Stanley Arndt, Esq., appearing as counsel for the plaintiff; Pierce Works, Esq., appearing as counsel for the defendant; counsel for the parties state that they have nothing further to present. The Court orders that said motions of defendant stand submitted. [65]

At a stated term, to-wit: The September Term, A.D., 1945, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 9th day of January in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

This cause having been heretofore heard and submitted on motion of the defendant to dismiss, etc., filed December 8, 1945, and counsel having filed memoranda of points and authorities, and the Court having duly considered the Amended Complaint, briefs of counsel, and the law applicable, and being fully advised in the premises, now hands down and orders filed its Opinion and Order, and in accordance therewith orders judgment of dismissal and directs the defendant to prepare and present proposed judgment in accordance with said opinion for signature. Opinion is filed. [66]

[Title of District Court and Cause.]

OPINION

Appearances: Wood, Crump, Rogers & Arndt, Esqs., 458 South Spring Street, Los Angeles 13, California, Attorneys for Plaintiffs. O'Melveny & Myers, Esqs., 433 South Spring Street, Los Angeles 13, California, Attorneys for Defendant.

This action comes before me on a motion to dismiss the amended complaint of certain sugar beet growers, who are seeking treble damages under the Anti-Trust Act (Secs. 1 to 7, Title 15 USCA), from the defendant sugar refiner, alleging a conspiracy, the effect of which prevented the sale of sugar beets on a free and open competitive market. The motion to dismiss is based on the ground that the raising of sugar beets has no direct effect upon interstate commerce and therefore does not come within the purview of the Anti-Trust Act.

The amended complaint alleges in effect that the plaintiffs are growers of sugar beets north of the 36th parallel in California and the only outlets for their products are three certain sugar refineries located in the same area within the State of California; that the sugar [67] refineries in said area entered into a conspiracy in violation of Section 1, Title 15 USCA, whereby each refiner agreed to pay the growers the same price for sugar beets and entered into identical contracts with all the growers of said area. The identical contracts among other things provided:

2. The seed to be used in growing said beets

shall be furnished by the Company for the price of fourteen cents (14 cents) per pound, which the grower agrees to pay. Seed furnished by the company shall not be planted upon any land not contracted to the Company. Any seed furnished by the Company and not planted shall be returned in good order to the Company, at the end of the planting season, and the Grower credited therefor. No credit will be given for seed not returned prior to July 1, 1940.

5. All sound beets grown in accordance with and under this contract shall be bought by the Company and paid for by it according to the following terms and schedule of prices:

The price per ton (2,000 pounds) for beets delivered hereunder to the Company shall be determined upon the average net returns (said net returns being defined in Paragraph No. 6 hereof) received for sugar manufactured at beet sugar factories located in California north of the 36th parallel, and sold during the period of twelve months commencing August 1, 1940, and based upon the Company's test of sugar content of the individual grower's beets in accordance with the following schedule: (Schedule omitted).

It is further alleged that prior to the said conspiracy the contracts of the defendant provided that the price paid for sugar beets would be based upon the net returns of the defendant, instead of the average net returns of all the sugar refineries in said area; that during the crop years complained of the defendant received .265 cents per pound more

for its raw sugar than the other refineries and as a result of said conspiracy the plaintiffs have received less for their sugar beets than they would have received except for said conspiracy.

Plaintiffs further complain that they failed to receive the fair market value for said sugar beets in accordance with the fair market price fixed by the Secretary of Agriculture; that the difference actually received by them and the price fixed by the Secretary of [68] Agriculture represents the damages suffered by them and under the provisions of the Anti-Trust Act said damages should be trebled.

From the complaint it appears that the net result of the conspiracy is that all beet growers in said area received the same price for their sugar beets and, while the plaintiffs may have suffered a detriment, growers delivering their beets to other sugar refineries received an advantage.

The complaint coupled with the contracts attached thereto as exhibits clearly establish that the sugar refineries were working in concert in the purchase of sugar beets from the grower plaintiffs. This brings us to the main question of law raised by the motion to dismiss.

The defendant contends that the raising of the beets, the sale to the refineries for the purpose of processing the same into sugar is an intrastate matter and beyond the reach of the Anti-Trust Act. With this contention I agree.

In the case of Coe v. Town of Errol, 116 U.S. 517 at page 526, 6 S. Ct. 475, the court stated:

"There must be a point of time when they cease

to be governed exclusively by the domestic law, and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commence their final movement for transportation from the state of their origin to that of their destination. When the products of the farm or the forest are collected, and brought in from the surrounding country to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports; nor are they in process of exportation; nor is exportation begun until they are committed to the common carrier for transportation out of the state to the state of their destination, or have started on their ultimate passage to that state. Until then it is reasonable to regard them as not only within the state of their origin, but as a part of the general mass of property of that state, subject to its jurisdiction, and liable to taxation there, if not taxed by reason of their being intended for exportation, but taxed, without any discrimination, in the usual way and manner in which such property is taxed in the state." [69]

To the same effect see Crescent Cotton Oil Company v. State of Mississippi. 257 U. S. 129, 42 S. Ct. 42, 66 L. Ed. 166.

The case closest in point is Dothan Oil Mill Co. vs. Espy, 127 So. Rep. 179, 182 (Ala.), wherein the court had before it the identical question now before this court. The court covered the question in the following language:

"We are not of opinion, however, that the business of buying cotton seed, confined wholly to the state, to be crushed and manufactured into oil and other products, in such state, constitutes interstate commerce, within the scope and purpose of said act or within the sense of the Sherman and Clayton Acts (15 USCA §§1-7, 15 and sections 12-27, 44) which confer on the federal courts exclusive jurisdiction to enforce said acts, though some of the manufactured products may eventually find their way into and become commodities of interstate commerce. 'The fact, of itself, than an article when in the process of manufacture is intended for export to another state does not render it an article of interstate commerce.' Crescent Cotton Oil Co. v. State of Mississippi, 257 U. S. 129, 42 S. Ct. 42, 44, 66 L. Ed. 166; Coe v. Errol, 116 U. S. 517, 6 S. Ct. 475, 29 L. Ed. 715; New York Central R. R. Co. v. Mohney, 252 U. S. 152, 40 S. Ct. 287, 64 L. Ed. 502, 9 A.L.R. 496.

"Though, under the provisions of section 26, tit. 15, of the United States Code Annotated, a private individual may maintain a suit to enjoin acts interfering with interstate commerce, in a proper case, the acts complained of must be immediately and directly against such commerce. Gable v. Vonnegut Mach. Co. et al. (C.C.A.) 274 F. 66; Anderson v. Shipowners' Association of Pacific Coast, 272 U. S. 359, 47 S. Ct. 125, 71 L. Ed. 298.

"These observations are sufficient to justify a denial of appellants' contention that, on the case made by the bill, the Federal District Court, only,

has jurisdiction to grant the relief prayed. Home Telephone Co. v. Michigan R. R. Commission, 174 Mich. 219, 140 N. W. 496."

In Utah-Idaho Sugar Co. v. Federal Trade Commission, 22 F. (2d) 122 (8th Cir.) the court had before it for consideration the very subject matter involved in this litigation, namely, sugar and sugar beets. The court therein stated: [70]

"In the present case there is no commerce to obstruct until the beets are manufactured into sugar and such sugar has been placed in transport. The argument is however, as stated above, that the acts here cut off at the source such commerce. It is only such acts as directly interfere with commerce which come under the federal jurisdiction. The line must be drawn somewhere, else all jurisdiction in trade or production would become federal. Hence Congress has not jurisdiction of such acts as only indirectly or remotely affect commerce. In the instant case if interference with the production and manufacture into sugar of beets is an obstruction to a later or unborn commerce in sugar to be made from the beets, one who intrastate sold defective beet seed, thus preventing the production of beets to be manufactured into sugar, would be in commerce, or one who sold fertilizer to raise the seed to plant the beets to make the sugar to be shipped in commerce would be in commerce.

"To the cases cited by Commissioner Van Fleet and Gaskill on the proposition that the production of sugar beets and their manufacture into sugar does not constitute interstate commerce, may be

added the later case of United Leather Worker' International Union Local Lodge or Union No. 66 v. Herbert & Meisel Trunk Co., 265 U. S. 457, 462, 44 S. Ct. 623, 68 L. Ed. 1104, 33 A.L.R. 566, and the cases there cited. We think it clear that the conduct on which the Commission's findings were made went no farther than an interference with the raising of sugar beets and the manufacture of sugar therefrom, and that those transactions were beyond the power and outside the scope of regulation given to the Commission by the Act of Congress under which its order was made."

In the case of Parker, Director of Agriculture, et al., vs. Brown, 317 U. S. 341, 361, 63 S. Ct. 307, 87 L. Ed. 315, arising in our own district, we find some pertinent language wherein the court stated:

"All of these cases proceed on the ground that the taxation or regulation involved, however drastically it may affect interstate commerce, is nevertheless not prohibited by the Commerce Clause where the regulation is imposed before any operation of interstate commerce occurs. Applying that test, the regulation here controls the disposition, including the sale and purchase, of raisins before they are processed and packed preparatory to interstate sale and shipment. The regulation is thus applied to transactions wholly intrastate before the raisins are [71] ready for shipment in interstate commerce.

"It is for this reason that the present case is to be distinguished from Lemke v. Farmers Grain Co., 258 U. S. 50, and Shafer v. Farmers Grain Co., 268

U. S. 189, on which appellee relies. There the state regulation held invalid was of the business of those who purchased grain within the state for immediate shipment out of it. The Court was of opinion that the purchase of the wheat for shipment out of the state without resale or processing was a part of the interstate commerce. Compare Chassaniol v. Greenwood, 291 U. S. 584."

It appears clear that the decisions of our courts have consistently held throughout the life of the Anti-Trust Act that products of the farm which are subsequently manufactured or processed into articles of commerce are beyond the reach of said Act.

I am further of the opinion that the plaintiffs have precluded a recovery on the ground that they are in effect co-conspirators. When they entered into the contracts with the refiners, they joined the conspiracy and further the object of the same. The contracts were entered into before the planting of the seed and when they agreed and became a party to the fixing of the prices to be received by the growers, they became a party to the conspiracy. Under such circumstances they are precluded from any recovery. 19 R.C.L. p. 28; Connolly et al. v. Union Sewer Pipe Co., 184 U. S. 540, 22 S. Ct. 431, 46 L. Ed. 679; Harriman et al. v. Northern Securities Co., 197 U. S. 244, 25 S. Ct. 493, 49 L. Ed. 739; Bishop v. American Preservers Co. et al. 105 F. 845; Bluefields S. B. Co. Ltd., v. United Fruit Co., 243 F. 1; Maltz v. Sax et al., 134 F. (2d) 2; Northwestern Oil Co. v. Socony Vacuum Oil Co., Inc., et al., 138 F. (2d) 967.

Defendant is entitled to judgment of dismissal and is directed to submit to me proposed judgment in accordance with this opinion.

Dated: This 9th day of January, 1946.

/s/ BEN HARRISON
Judge

[Endorsed]: Filed Jan. 9, 1946. [72]

In the District Court of the United States, Southern District of California, Central Division

No. 4643-BH

MANDEVILLE ISLAND FARMS, INC., a Corporation, and ROSCOE C. ZUCKERMAN,
Plaintiffs,

vs.

AMERICAN CRYSTAL SUGAR COMPANY, a Corporation,
Defendant.

ORDER GRANTING MOTION TO DISMISS AND JUDGMENT OF DISMISSAL

(Ordered, adjudged and decreed that the action be and the same hereby is dismissed)

The defendant herein having duly moved to dismiss the above entitled action and said motion having been duly argued and submitted,

It Is Ordered that said motion be and the same hereby is granted, wherefore:

It Is Ordered, Adjudged and Decreed that said action be and the same hereby is dismissed.

Dated January 14, 1946.

/s/ BEN HARRISON
Judge

Approved as to form pursuant to Rule 7(a).

WOOD, CRUMP, ROGERS & ARNDT
By STANLEY M. ARNDT
Attorneys for Plaintiffs

Judgment entered Jan. 14, 1946. Docketed Jan. 14, 1946. Book 36, Page 454.

EDMUND L. SMITH
Clerk
By L. B. FIGG
Deputy

[Endorsed]: Filed Jan. 14, 1946. [73]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT COURT OF APPEALS

Notice Is Hereby Given that Mandeville Island Farms, Inc., a corporation, and Roscoe C. Zuckerman, plaintiffs above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the Order heretofore made and entered herein

on or about January 14, 1946, granting the motion of defendant, American Crystal Sugar Company, a corporation, to dismiss the amended complaint herein and from the judgment entered in this action on or about January 14, 1946, ordering, adjudging and decreeing that the within action "be and the same hereby is dismissed" and from that certain Order and Judgment entitled "Order Granting Motion to Dismiss and Judgment of Dismissal" entered in this action on or about January 14, 1946.

Dated, January 24, 1946.

WOOD, CRUMP, ROGERS & ARNDT

/s/ By STANLEY M. ARNDT

Attorneys for Appellants Mandeville Island Farms, Inc., a Corporation, and Roscoe C. Zuckerman

[Endorsed]: Filed Jan. 29, 1946. [75]

[Title of District Court and Cause.]

STATEMENT OF THE POINTS UPON WHICH APPELLANTS RELY

Now come Mandeville Island Farms, Inc., and Roscoe C. Zuckerman, plaintiffs and appellants, and, pursuant to Rule 75(d), set forth a concise statement of the points which they intend to rely on appeal, as follows:

1. The District Court erred in granting defendant's "Motion to Dismiss or in the Alternative to Strike from Amended Complaint."

2. The District Court erred in rendering judgment of dismissal in favor defendant, American

Crystal Sugar Company, and against plaintiffs, Mandeville Island Farms, Inc., and Roscoe C. Zuckerman, which judgment was entered and noted in the Civil Docket on the 14th day of January, 1946.

3. The District Court erred in making and rendering the [76] order and judgment herein entitled "Order Granting Motion to Dismiss and Judgment of Dismissal" and causing the same to be entered.

Dated, January 29, 1946.

WOOD, CRUMP, ROGERS & ARNDT

/s/ By STANLEY M. ARNDT

Attorneys for Appellants Mandeville Island Farms, Inc., a Corporation, and Roscoe C. Zuckerman

[Endorsed]: Filed Jan. 29, 1946. [77]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL PURSUANT TO RULE 75(a) RULES OF CIVIL PROCEDURE

Now come Mandeville Island Farms, Inc., and Roscoe C. Zuckerman, plaintiffs and appellants herein and, pursuant to Rule 75(a), designate the record on appeal as follows, to-wit:

All pleadings filed herein (excluding the points and authorities of the various parties), all stipulations, all judgments and orders of Court, including that certain order and judgment entitled Order Granting Motion to Dismiss and Judgment of Dismissal, the Notice of Appeal, this Designation, the

Statement of the Points upon which Appellants Rely, and any documents filed by respondent in response to any of the above documents or in connection with this appeal, and all entries in the Clerk's docket regarding or affecting this cause. [81]

Dated, January 29, 1946.

WOOD, CRUMP, ROGERS & ARNDT

/s/ By STANLEY M. ARNDT

Attorneys for Appellants Mandeville Island Farms, Inc., a Corporation, and Roscoe C. Zuckerman

(Acknowledgment of Service.)

[Endorsed]: Filed Jan. 29, 1946. [82]

In the District Court of the United States, Southern District of California, Central Division

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 83, inclusive, contain full, true and correct copies of Complaint for an Accounting, Damages Under the Anti-Trust Laws, etc.; Notice of Motion to Dismiss or in the Alternative to Strike from Complaint or for a More Definite Statement or for a Bill of Particulars; Minute Orders Entered September 20, 1945; October 31, 1945, November 13, 1945, November 19, 1945, and November 26, 1945, respectively; Stipulation and Order: Amended Complaint; Notice of Motion to Dismiss or in the Alternative to Strike

from Amended Complaint; Minute Orders Entered December 17, 1945, and January 9, 1946, respectively; Opinion; Order Granting Motion to Dismiss and Judgment of Dismissal; Notice of Appeal; Statement of Points upon which Appellants Rely; Docket Entries and Designation of Record on Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to $23.55 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 28th day of February, 1946.

[Seal] EDMUND L. SMITH
Clerk
By THEODORE HOCKE
Chief Deputy Clerk

[Endorsed]: No. 11266. United States Circuit Court of Appeals for the Ninth Circuit. Mandeville Island Farms, Inc., a Corporation, and Roscoe C. Zuckerman, Appellants, vs. American Crystal Sugar Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed March 4, 1946.

/s/ PAUL P. O'BRIEN
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit

United States Circuit Court of Appeals
For the Ninth Circuit

No. 11266

MANDEVILLE ISLAND FARMS, INC., a Corporation, and ROSCOE C. ZUCKERMAN,
Appellants,
Plaintiffs below)

vs.

AMERICAN CRYSTAL SUGAR COMPANY, a Corporation,
Appellee.
(Defendant below)

STATEMENT OF THE POINTS ON WHICH APPELLANTS INTEND TO RELY ON THE APPEAL AND DESIGNATION OF THE PARTS OF THE RECORD WHICH APPELLANTS THINK NECESSARY FOR THE CONSIDERATION THEREOF

Now come appellants and, pursuant to subdivision 6 of rule 19 of the rules of the above entitled Court, set forth a concise statement of the points upon which appellants intend to rely on this appeal:

1. The District Court erred in granting defendant's "Motion to Dismiss or in the Alternative to Strike from Amended Complaint."

2. The District Court erred in rendering judgment of dismissal in favor of defendant, American Crystal Sugar Company, and against plaintiffs,

Mandeville Island Farms, Inc., and Roscoe C. Zuckerman, which judgment was entered and noted in the Civil Docket on the 14th day of January, 1946.

3. The District Court erred in making and rendering the order and judgment herein entitled "Order Granting Motion to Dismiss and Judgment of Dismissal" and causing the same to be entered.

Appellants designate the following parts of the record which appellants think necessary for the consideration on appeal, as follows:

1. Names and Addresses of Attorneys.

2. Complaint.

3. Motion to Dismiss or in the Alternative to Strike from Complaint or for a more Definite Statement or for a Bill of Particulars, Notice of.

4. Minute Order Entered September 20, 1945.

5. Minute Order Entered October 31, 1945.

6. Minute Order Entered November 13, 1945.

7. Stipulation and Order dated November 14, 1945.

8. Minute Order entered November 19, 1945.

9. Minute Order entered November 26, 1945.

10. Amended Complaint.

11. Motion to Dismiss or in the Alternative to Strike from Amended Complaint.

12. Minute Order entered December 17, 1945.

13. Minute Order entered January 6, 1946.

14. Opinion.

15. Order Granting Motion to Dismiss and Judgment of Dismissal.

16. Notice of Appeal.

17. Statement of Points on Appeal.

18. Designation of Record on Appeal.

Respectfully submitted,

WOOD, CRUMP, ROGERS & ARNDT

/s/ By STANLEY M. ARNDT

Attorneys for Appellants

[Endorsed]: Filed March 4, 1946. Paul P. O'Brien, Clerk.

No. 11266

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

MANDEVILLE ISLAND FARMS, INC., a corporation, and ROSCOE C. ZUCKERMAN,

Appellants,

vs.

AMERICAN CRYSTAL SUGAR COMPANY, a corporation,

Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

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PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Monday, November 18, 1946.

Before: Mathews, Stephens and Orr, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Stanley Arndt, counsel for appellants, and by Mr. Pierce Works, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Tuesday, January 14, 1947.

Before: Mathews, Stephens and Orr, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE

Ordered that the typewritten per curiam opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11,266

Jan. 14, 1947

MANDEVILLE ISLAND FARMS, INC., a Corporation, and ROSCOE C. ZUCKERMAN,

Appellants,

vs.

AMERICAN CRYSTAL SUGAR COMPANY, a Corporation,

Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Before: Mathews, Stephens and Orr,
Circuit Judges.

PER CURIAM OPINION

This is an appeal from a judgment of dismissal of the amended complaint. The judge presiding prepared and filed an opinion setting forth fully his reasons for the dismissal (64 F. Supp. 265). The first paragraph thereof reading as follows: "This action comes before me on a motion to dismiss the amended complaint of certain sugar beet grow-

ers, who are seeking treble damages under the Anti-Trust Act, Secs. 1 to 7, 15 note, Title 15 U.S.C.A., from the defendant sugar refiner, alleging a conspiracy, the effect of which prevented the sale of sugar beets on a free and open competitive market. The motion to dismiss is based on the ground that the raising of sugar beets has no direct effect upon interstate commerce and therefore does not come within the purview of the Anti-Trust Act."

We have carefully examined the opinion and approve it except in the instances hereinafter set out. We do not approve the citation of tax cases as authority for any issue in the case, although their citation presents no inconsistency in the opinion.

We cite the opinion of Wickard v. Filburn, 317 U.S. 111, 121-125, upon the historic course of national legislation in relation to "trusts" wherein the suggestion is made that instead of the expression "direct effect" on interstate commerce when applied to the Sherman Anti-Trust Act the more accurate expression is "substantial economic effect" on interstate commerce.

We do not reach and therefore make no expression upon the appellee's claim that if the amended complaint states a cause of action in conspiracy the appellants are co-conspirators and therefore are in pari delicto.

Affirmed.

[Endorsed]: Opinion. Filed Jan. 14, 1947. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 11266

MANDEVILLE ISLAND FARMS, INC., et al.,

Appellants,

vs.

AMERICAN CRYSTAL SUGAR COMPANY,

Appellee.

DECREE

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the judgment of the said District Court in this cause be, and hereby is, affirmed with costs in favor of the appellee and against the appellants.

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellee recover against the appellants, for costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered January 14, 1947.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Thursday, March 27, 1947.

Before: Mathews, Stephens and Orr, Circuit Judges.

[Title of Cause.]

ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition of appellant, filed February 12, 1947, and within time allowed therefor by rule of court, for a rehearing of above cause, and of the answer to petition for rehearing filed February 19, 1947, and by direction of the Court, It Is Ordered that the petition for rehearing be, and hereby is denied.

United States Circuit Court of Appeals for the Ninth Circuit

[Title of Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred twenty-three (123) pages, numbered from and including 1 to and including 123, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 7th day of April, 1947.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 2, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.